



Two Salary-Setting Measures

San Diego City Council Meeting

July 15, 2008

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Current Procedure

- Salary Setting Commission [7 citizen members] reviews and recommends salaries for Mayor and City Council.
- Two-year intervals.
- Council passes ordinance setting salaries at or below the recommendation.
- Ordinance is subject to referendum.
- *Mayor has veto authority.



Madaffer-Young Proposal: (O-2008-120 COR.COPY)

- Sets salaries for **Mayor** at 100% and **City Council** at 75% of judicial salaries.
Effective 7-1-09.
- Future annual raises automatically set at same percentage given judges by state law. Chief Financial Officer determines; City Manager incorporates in budget; no Council modification; *veto; or referendum.



Superior Court Judges' Salaries

- Set and adjusted by state statute.
Eff. 7-1-07 = \$178,789.
- Raises are set annually. Either the average percentage salary increase given to state employees, or any dollar limitation on salaries given state employees.
- Legislature can amend statute to increase salaries: e.g., 8.5% in 2001, and again in 2007.



Choices for O-2008-120

- Option 1: Caps annual increases at no more than 5% of existing salary.
- Option 2: Provides "escape clause" to permit Council to suspend operation of sections in case of fiscal emergency.



Frye Proposal: (O-2008-171)

- Sets salaries for Mayor and Councilmembers at current levels.
- Sets fixed salary increases for two years at either 3% or 5%.
- Future annual raises automatically set at same percentage given judges by state law. Chief Financial Officer determines; City Manager incorporates in budget; no Council modification; *veto; or referendum.
- Raises capped at 5%.



Choices for O-2008-171

- Establish 3% or 5% as fixed raise effective 7-1-09.
- Establish 3% or 5% as fixed raise effective 7-1-10.



Summary of Choices

- Whether to submit a measure to the voters for approval.
- If O-2008-120, whether to include 5% cap and/or escape clause.
- If O-2008-171, set the fixed annual percent raise for the next two years.

COUNCIL DOCKET OF

July 15, 2008☐ Supplemental ☒ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Salary Setting Process for City Councilmembers

☒ Reviewed ☐ Initiated By Rules On 5/28/08 Item No. 3

RECOMMENDATION TO:

- Direct the Attorney bring to Council two options for ballot measures related to modifying the salary setting process:
1. Ordinance 0-2008-120 (per the February 22, 2008 memo from Councilmembers Madaffer and Young); and
 2. The hybrid option, requested by Councilmember Frye, establishing a base level salary for elected officials and adding an annual percentage increase, tied to the state judicial salary percentage increase, with an annual maximum of 5%.
 3. Direct the City Clerk to estimate the cost of placing one or more items on the November ballot.

VOTED YEA: Madaffer, Frye, Young, Hueso

VOTED NAY:

NOT PRESENT: Peters

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.


INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

City Attorney's May 22, 2008, report; Ordinance No. O-2008-94; Review of Salary-Setting Measures PowerPoint

COUNCIL COMMITTEE CONSULTANT



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(O-2008-94)

RULES 5/28/08 #3

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; REPEALING ARTICLE IV, SECTION 24.1; AMENDING ARTICLE V, SECTIONS 40 AND 41.1; AND AMENDING ARTICLE XV, SECTION 280, ALL RELATING TO SETTING THE SALARIES OF ELECTED CITY OFFICIALS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-_____, adopted on _____, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for all elected City officials by authorizing a Salary Setting Commission to establish the salaries of all the elected officials; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section

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9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition amending the City Charter by retitling and amending Article III, section 12.1; repealing Article IV, section 24.1; amending Article V, sections 40 and 41.1; and amending Article XV, section 280, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

PROPOSITION

Section 12.1: ~~Councilmanic~~ Salaries of Elected Officials

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing or modifying the salary of ~~members of the Council~~ all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may shall~~ adopt those salaries by ordinance as recommended by the Commission, ~~or in some lesser amount, but in no event may it increase the amount.~~ The ordinance adopting the salaries of elected officials shall be separate from the ordinance establishing salaries for all City employees. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

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~~Section 24.1: Mayor's Salary~~

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

Section 40: City Attorney

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the

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City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same,

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together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the

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annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed ~~by the Council~~ as provided in section 12.1 and set forth in the annual appropriation ordinance, ~~provided~~ except that the salary of the City Attorney may not be decreased during a term of office, ~~but~~ and in no event shall said salary be less than \$15,000.00 per year.

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Section 41.1: Salary Setting Commission

There is hereby ~~created~~ established a newly constituted Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The ~~first~~ members shall be appointed for a term commencing ~~January 1, 1974~~ March 1, 2009. ~~Initially, the~~ Commissioners shall be appointed in a manner established by the Civil Service Commission so that three are appointed for two-year terms and four are appointed for four-year terms. The Commission shall consist of the following persons: (1) three members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager; (2) two members who have experience in

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the business community; and (3) two members, each of whom is an officer or member of a labor organization. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. All members shall be residents of this City. Members of the previous Commission who have not completed their terms as of March 1, 2009 may be appointed to the newly constituted Commission if they meet eligibility requirements, subject to other Charter requirements. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification enactment of an ordinance establishing salaries for all elected City officials the Mayor and Council as provided in section 12.1 of by this Charter. Council shall provide the funds necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price Index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate

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~~to attract sufficiently qualified candidates. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Section 280: Approval or Veto of Council Actions by Mayor

(a) The Mayor shall have veto power over all resolutions and ordinances passed by Council with the following exceptions:

(1) The Mayor's veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.

(2) The Mayor's veto power shall not extend to those matters where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented.

(3) Emergency Ordinances.

(4) The Annual Appropriations Ordinance.

(5) The Salary Ordinance, which instead shall be subject to veto in accordance with the process described in section 290.

(6) The ordinance setting the salaries of elected officials in accordance with section 12.1.

[subsections (b) - (c) no change in text]

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END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ AMENDS THE CITY CHARTER TO REQUIRE THE COUNCIL TO ADOPT THE SALARIES FOR ALL ELECTED CITY OFFICIALS AS RECOMMENDED BY A NEWLY CONSTITUTED SALARY SETTING COMMISSION. Shall the Charter be amended to require the Council to adopt by ordinance the recommendations of a newly constituted Salary Setting Commission of the salaries for all elected City officials, with such ordinance not to be subject to Mayoral veto, but subject to referendum?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or

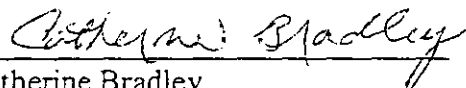
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deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Catherine Bradley
Chief Deputy City Attorney

CMB:als
1/24/08
Or.Dept:CityAtty
O-2008-94

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; AMENDING ARTICLE IV, SECTION 24.1; REPEALING ARTICLE V, SECTION 41.1; AND AMENDING ARTICLE XV, SECTION 290, ALL RELATING TO SETTING THE SALARIES OF ELECTED CITY OFFICIALS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-_____, adopted on _____, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for the City Council and the Mayor by linking the salaries and future adjustments to the salaries of these elected officials to those established and adjusted by state law for judges of the Superior Court of the State of California; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section

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9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition amending the City Charter by retitling and amending Article III, section 12.1; amending Article IV, section 24.1; repealing Article V, section 41.1; and amending Article XV, section 290, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

PROPOSITION

Section 12.1: ~~Councilman~~member Salaries

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Members of the City Council shall be paid an annual salary [Option 1a: initially] equal to percent (%) of that prescribed and adjusted by state law for judges of the Superior Court of the State of California. The Auditor and Comptroller shall be responsible for ascertaining the salary of Superior Court judges and for setting and adjusting the salaries of Councilmembers in accordance with this section. The City Manager shall incorporate such salaries in the annual budget submitted to the Council, subject to~~

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balanced budget requirements, to be effective on July 1, 2008, and on July 1 of each year thereafter. [Option 1b: Annual adjustments to the salaries of Councilmembers shall not exceed 5 percent of the salaries in effect on June 30 of the preceding fiscal year.] [Option 2: Upon a determination by the City Manager that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Council may, by majority vote, suspend compliance with this section for any fiscal year.]

Section 24.1: Mayor's Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~ The Mayor shall be paid a salary that is thirty-three and one third percent (33.3%) more than that of a Councilmember as established and adjusted by section 12.1. The Auditor and Comptroller shall be responsible for setting and adjusting the salary of the Mayor. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements, to be effective on July 1, 2008, and on July 1 of each year thereafter.

Section 41.1: Salary Setting Commission

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be~~

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~~appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two year terms and four are appointed for four year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

[subsection (a) no change in text]

(b) Prior to June 15 of each year, the Council shall satisfy its obligations under Charter section 71 by holding a minimum of two public hearings to consider the budget submitted by the Mayor.

The budget shall include the salaries of the Mayor and Council members as established by sections 12.1 and 24.1. Prior to the June 15 deadline, and after at least two such public hearings have been held, the Council shall pass a resolution that either approves the budget as submitted by the Mayor or modifies the budget in whole or in part. The Council's modifications may call for adding new items or for increasing or decreasing any item, with the exception of the salaries established by sections 12.1 and 24.1.

[subsections (1) through (2) no change to text]

[subsections (c) through (d) no change in text]

END OF PROPOSITION

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Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ . AMENDS THE CITY CHARTER TO ESTABLISH AND ADJUST THE SALARIES FOR THE MAYOR AND COUNCILMEMBERS. Shall the Charter be amended to establish and adjust the salaries of the City Council and Mayor [Option - with certain possible exceptions], by linking those salaries to a percentage of the salaries of State Superior Court judges as set and adjusted by state law?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.


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Section 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of

San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Catherine Bradley
Chief Deputy City Attorney

CMB:als

2/22/08

Or.Dept:CityAtty

O-2008-116

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; AMENDING ARTICLE IV, SECTION 24.1; REPEALING ARTICLE V, SECTION 41.1; AND AMENDING ARTICLE XV, SECTION 290, ALL RELATING TO SETTING THE SALARIES OF ELECTED CITY OFFICIALS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-_____, adopted on _____, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for the City Council and the Mayor to establish new salaries in the Charter for those elected officials for two consecutive years and thereafter annually adjust those salaries upward with increases in the CPI-U for San Diego; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section

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9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition amending the City Charter by retitling and amending Article III, section 12.1; amending Article IV, section 24.1; repealing Article V, section 41.1; and amending Article XV, section 290, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

PROPOSITION

Section 12.1: ~~Councilman~~member Salaries

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Effective July 1, 2008, the annual salary for members of the City Council shall be \$. Effective July 1, 2009 the annual salary for members of the City Council shall be \$. Effective July 1, 2010 and each July 1 thereafter, the annual salary for members of the City Council shall be increased to reflect any upward change in the Consumer Price Index for Urban Consumers for San Diego (CPI-U) for the preceding calendar year ending December 31. The Auditor and Comptroller shall be~~

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responsible for determining if there is an upward change in the Consumer Price Index for Urban Consumers for San Diego for the calendar year preceding July 1, 2010 and thereafter, and for adjusting the salaries of Council members in accordance with this section, [Option 1: except that annual adjustments shall not exceed 5 percent of the salaries in effect on June 30 of the preceding fiscal year.] The City Manager shall incorporate such salaries in the annual budget submitted to the Council, subject to balanced budget requirements. [Option 2: Upon a determination by the City Manager that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Council may, by majority vote, suspend compliance with this section for any fiscal year.]

Section 24.1: Mayor's Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Effective July 1, 2008 and thereafter, the Mayor~~
shall be paid an annual salary that is thirty-three and one-third percent (33.3%) more than that of a Council member as established and adjusted by section 12.1. The Auditor and Comptroller shall be responsible for setting and adjusting the annual salary of the Mayor. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements.

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~~Section 41.1: Salary Setting Commission~~

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two year terms and four are appointed for four year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

[subsection (a) -- no change in text]

(b) Prior to June 15 of each year, the Council shall satisfy its obligations under Charter section 71 by holding a minimum of two public hearings to consider the budget submitted by the Mayor. The budget shall include the salaries of the Mayor and Council members as established by sections 12.1 and 24.1. Prior to the June 15 deadline, and after at least two such public hearings have been held, the Council shall pass a resolution that either approves the budget as submitted by the Mayor or modifies the budget in whole or in part. The Council's modifications may call for adding new items or for increasing or decreasing any item, with the exception of the salaries established by sections 12.1 and 24.1.

[subsections (1) through (2) no change to text]

[subsections (c) through (d) no change in text]

000559

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ . AMENDS THE CITY CHARTER TO ESTABLISH AND ADJUST SALARIES FOR THE MAYOR AND COUNCILMEMBERS. Shall the Charter be amended to establish [Option-with certain possible exceptions] fixed salaries for the Mayor and City Councilmembers for two consecutive years and thereafter to provide annual increases to those salaries based on increases in the Consumer Price Index for Urban Consumers for San Diego?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

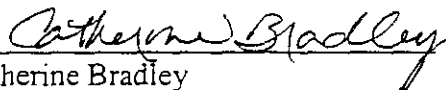
Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or

000560

deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Catherine Bradley
Chief Deputy City Attorney

CMB:als
2/22/08
Or.Dept:CityAtty
O-2008-117

000561

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DIRECTING THE CITY ATTORNEY TO PREPARE A BALLOT TITLE, SUMMARY, AND IMPARTIAL ANALYSIS; DIRECTING THE MAYOR TO PREPARE A FISCAL ANALYSIS; AND ASSIGNING AUTHORSHIP OF THE BALLOT ARGUMENT; ALL REGARDING THE BALLOT MEASURE MODIFYING THE SALARY SETTING PROCESS FOR ALL ELECTED CITY OFFICIALS BY AUTHORIZING A SALARY SETTING COMMISSION TO ESTABLISH THE SALARIES OF ALL ELECTED OFFICIALS.

WHEREAS, San Diego Municipal Code section 27.0504 allows the City Council to direct the City Attorney to prepare a ballot title and summary of any proposed ballot measure; and

WHEREAS, San Diego Municipal Code section 27.0505 allows the City Council to direct the City Attorney to prepare an impartial analysis of any proposed ballot measure; and

WHEREAS, San Diego Municipal Code section 27.0506 allows the City Council to direct the City Manager (Mayor under the current Council-Mayor form of government) to prepare a fiscal impact analysis of any proposed legislative act; and

WHEREAS, San Diego Municipal Code section 27.0513 allows the City Council to assign authorship and signing of the ballot argument to itself, individual Councilmembers, and the Mayor; and

WHEREAS, at a meeting held on February 4, 2008, the City Council adopted Ordinance No. O-_____ (N.S.), placing the ballot measure to amend the City Charter to modify the salary setting process for all elected City officials, by authorizing a Salary Setting Commission

000562

to establish the salaries of all elected City officials, on the June 3, 2008 ballot; NOW,

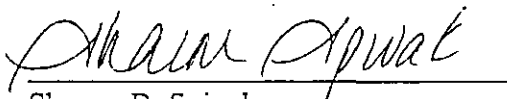
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Attorney is directed to prepare a ballot title and summary of the proposed ballot measure for inclusion in the voter pamphlet and to deliver the ballot title and summary to the Office of the City Clerk, Elections Section; no later than March 17, 2008.
2. That the City Attorney is directed to prepare an impartial analysis of the proposed ballot measure for inclusion in the voter pamphlet and to deliver said analysis to the Office of the City Clerk, Elections Section, no later than March 17, 2008.
3. That the Mayor is directed to prepare a fiscal impact analysis of the proposed ballot measure for inclusion in the voter pamphlet and to deliver said analysis to the Office of the City Clerk, Elections Section, no later than March 17, 2008.
4. That _____ is authorized to sign and file a written argument in support of the ballot measure for inclusion in the voter pamphlet and to deliver said argument to the Office of the City Clerk, Elections Section, no later than March 17, 2008.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Sharon B. Spivak
Deputy City Attorney

CMB:SBS:als
01/29/08
Or.Dept:CityAtty
R-2008-626

000563

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000565

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; AMENDING ARTICLE IV, SECTION 24.1; REPEALING ARTICLE V, SECTION 41.1; AND AMENDING ARTICLE XV, SECTION 290, ALL RELATING TO SETTING THE SALARIES OF ELECTED CITY OFFICIALS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-19713, adopted on February 4, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for the City Council and the Mayor by linking the salaries and future adjustments to the salaries of these elected officials to those established and adjusted by state law for judges of the Superior Court of the State of California; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section

000566 budget requirements, to be effective on July 1, 2009, and on July 1 of each year thereafter.

[Option 1: Annual adjustments to the salaries of Councilmembers shall not exceed 5 percent of the salaries in effect on June 30 of the preceding fiscal year.] [Option 2: Upon a determination by the City Manager that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Council may, by majority vote, suspend compliance with this section for any fiscal year.]

Section 24.1: Mayor's Salary

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. The Mayor shall be paid an annual salary equal to that prescribed and adjusted by state law for judges of the Superior Court of the State of California. The Auditor and Comptroller shall be responsible for setting and adjusting the salary of the Mayor. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements, to be effective on July 1, 2009, and on July 1 of each year thereafter.

Section 41.1: Salary Setting Commission

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be

000567 Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ AMENDS THE CITY CHARTER TO ESTABLISH AND ADJUST THE SALARIES FOR THE MAYOR AND COUNCILMEMBERS. Shall the Charter be amended to establish and adjust the salaries of the City Council and Mayor [Option - with certain possible exceptions], by linking those salaries to a percentage of the salaries of State Superior Court judges as set and adjusted by state law?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

000569

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

CITY ATTORNEY

3. DATE:

January 25, 2008

4. SUBJECT: Submitting to the voters a ballot proposition amending the City Charter to modify the salary setting process for all elected City officials by authorizing a Salary Setting Commission to establish the salaries of all the elected officials

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Cathy Bradley, Chief Deputy City Attorney
236-6220 M.S. 59

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Sharon Spivak, Deputy City Attorney
236-6220 M.S. 59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	1/25/08	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>[Signature]</i>	1/25/08
4	LIAISON OFFICE			11	ORIG. DEPT	<i>[Signature]</i>	1/25/08
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			
7							

11. PREPARATION OF:

☒ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Submitting to the qualified voters of the City of San Diego at the Municipal Election consolidated with the Statewide Primary Election to be held on June 3, 2008, one proposition amending the City Charter by amending the City Charter by amending Article III, section 12.1; repealing Article IV, section 24.1; amending Article V, sections 40 and 41.1; and amending Article XV, section 280, relating to setting the salaries of elected City officials.

2. Directing the City Attorney to prepare a ballot title and summary. 3. Directing the City Attorney to prepare an impartial analysis.

4. Directing the Mayor's Office to prepare a fiscal analysis. 5. Assigning authorship of the ballot argument.

11A. STAFF RECOMMENDATIONS:

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): N/A

COMMUNITY AREA(S): N/A

ENVIRONMENTAL IMPACT: This action is not a "project" for purposes of CEQA.

HOUSING IMPACT: N/A

OTHER ISSUES:

FEB 25 2008

000571

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED:

REPORT NO.:

ATTENTION: City Council

ORIGINATING DEPARTMENT: City Clerk

SUBJECT: MUNICIPAL SPECIAL ELECTION: JUNE 3, 2008

COUNCIL DISTRICT(S): ALL

STAFF CONTACT: Denise Jenkins, (619) 533-4030

REQUESTED ACTION: Resolution

STAFF RECOMMENDATION:

Pass Resolution

EXECUTIVE SUMMARY:

Introduce and adopt the resolution and ordinance in Subitem A; consider discretionary actions in Subitems B, C, D and E:

Subitem-A: (O-####-##)

Introduction and adoption of an Ordinance submitting to the qualified voters of the City of San Diego at the Special Municipal Election consolidated with the California State Primary Election to be held on June 3, 2008, one proposition relating to a Charter amendment to provide for mandatory recycling.

Subitem-B

Directing the City Attorney to prepare a ballot title and summary.

Subitem-C

Directing the City Attorney to prepare an impartial analysis.

Subitem-D

Directing the Mayor's Office to prepare a fiscal analysis.

Subitem-E

Assigning authorship of the ballot argument.

FISCAL CONSIDERATIONS:

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Rules Committee January 23, 2008 forwarded item to full Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): N/A

Elizabeth Maland
City Clerk

000573

MAXIMUM YEARLY COMPENSATION AND FRINGE BENEFIT COSTS
FOR MAYOR AND COUNCILMEMBERS
FISCAL YEAR 2007-2008

	<u>Mayor</u>	<u>Councilmember</u>
ANNUAL COMPENSATION	\$ 100,464	\$ 75,386
FRINGE BENEFITS (City Costs)		
Retirement	47,328	35,514
Retirement Offset	5,621	4,218
Supplement Pension Plan	6,078	4,561
Medicare	1,596	1,232
Flexible Benefits Plan (includes \$3,000 management benefits):		
A: No medical coverage	4,000	4,000
B: Employee only medical coverage	7,689	7,689
C: Employee & 1 dependent medical coverage	9,826	9,826
D: Employee & 2+ dependents medical coverage	10,690	10,690
Long Term Disability Insurance	502	377
Worker's Compensation	804	678
Parking	960	960
*Car Allowance	<u>9,600</u>	<u>9,600</u>
Total Fringe Benefits <i>** 90% of Salary</i>	<u>83,179**</u>	<u>67,830**</u>
TOTAL ANNUAL COMPENSATION AND FRINGE BENEFITS	<u>\$ 183,643</u>	<u>\$ 143,216</u>

*Three options available: Cash reimbursement, Leased auto, or City auto.

**Assumes selection of medical coverage for employee & 2+ dependents.

000574

Mayor and Council Members Retirement Plan

Estimated Yearly Retirement Allowance Based on Current Salary

	One Term (4 years)	Two Terms (8 years)
Mayor	\$14,065.06	\$28,130.02
Council	\$10,554.14	\$21,108.18

Notes:

- 1) Mayor and Councilmember's are eligible to receive retirement benefits at age 55 with 4 years of service credit or any age with 8 years of service credit. There is a 2% per year reduction to the retirement allowance for each year of age under 55.
- 2) The Elected Officers' retirement allowance is calculated as 3.5% times the Final Compensation times the years of service as an elected officer.
- 3) If an elected officer has service credit in another SDCERS plan, they will be granted an additional retirement allowance based on the service credit and benefit in effect for that plan at the time of retirement.

COMPARISON OF SALARIES

TABLE 4: COUNCIL - OTHER MAJOR CITIES

CITY		POPULATION	% CHANGE	ANNUAL BUDGET	% CHANGE	FORM OF GOVT	FULL TIME	NUMBER ON COUNCIL	MEETINGS PER MONTH	COMMITTEE SYSTEM	ANNUAL SALARY	% CHANGE
San	11/05	1,250,000	0.56%	\$2,370,000,000	21.77%	Strong Mayor	Yes	8	8	Yes	\$75,386	0.00%
Diego	11/07	1,256,951		\$2,886,000,000							\$75,386	
Austin,	11/05	700,407	1.35%	\$2,000,000,000	25.00%	Council/ Manager	No	6	4	Yes	\$45,000	17.78%
exas	11/07	709,893		\$2,500,000,000							\$53,000	
Dallas,	11/05	1,208,318	2.04%	\$2,189,950,809	0.00%	Council/ Manager	No	14	4	Yes	\$37,500	0.00%
exas	11/07	1,232,940		\$2,189,950,809							\$37,500	
Houston,	11/05	2,100,000	-3.97%	\$3,200,000,000	19.11%	Strong Mayor	No	14	8	Yes	\$49,794	3.94%
exas (1)	11/07	2,016,582		\$3,811,511,000							\$51,758	
Phoenix,	11/05	1,421,298	3.84%	\$3,011,449,000	18.34%	Council/ Manager	Yes	8	8	Yes	\$51,504	19.60%
AZ (1)	11/07	1,475,834		\$3,563,700,000							\$61,600	
Portland,	11/05	550,560	2.20%	\$1,726,990,162	76.61%	Commission	Yes	4	4	No	\$90,215	1.7%
OR (1)	11/07	562,690		\$3,050,000,000							\$95,867	
Seattle,	11/05	572,600	1.07%	\$2,835,508,000	16.02%	Public Service	Yes	9	4	Yes	\$96,507	7.64%
WA (1)	11/07	578,700		\$3,289,730,000							\$103,878	
Detroit,	11/05	900,198	-3.23%	\$2,821,008,281	10.67%	Strong Mayor	Yes	9	4	Yes	\$81,312	0.00%
MI	11/07	871,121		\$3,122,141,866							\$81,312	

000575



RECEIVED
CITY CLERK'S OFFICE
08 FEB 22 PM 3:27
SAN DIEGO, CALIF.

2/25

City Of San Diego

MEMORANDUM

M-08-02-03 Please refer to this number when responding to this memo

DATE: February 22, 2008

TO: City Attorney Michael Aguirre

FROM: Council President Pro Tem Jim Madaffer
 Councilmember Tony Young

SUBJECT: Salary Setting Process for Mayor & City Councilmembers

Jim Madaffer
T Young

On Tuesday, February 25th, the City Council will resume its discussion regarding the salary setting process for the Mayor and City Councilmembers. This is a challenging issue that requires analysis and discussion of all options.

While the City Council already directed your office to prepare a draft Charter change regarding the salary setting process for the Mayor and City Council and we have reviewed your proposed changes, we are asking that you draft an alternative revision for the City Council's consideration. Our proposal would eliminate the Salary Setting Commission and fixing the Mayor's salary to be equivalent to a Superior Court Judge within the San Diego Judicial District and salaries for City Councilmembers would be fixed at 75% of a Superior Court Judge Salary in the San Diego Judicial District. This change would be effective July 1, 2009. The City Council would continue to follow the existing process as currently outlined in the Charter until that time.

There is a sense of urgency due to the fact that this will be discussed at City Council on Monday. Thank you for your assistance with this matter.

JM/af

cc: Honorable Mayor Jerry Sanders
Honorable City Councilmembers
Elizabeth Maland, City Clerk

2/25/08

000577



RECEIVED
CITY CLERK'S OFFICE

08 FEB 22 PM 3:00

SAN DIEGO, CALIF.

61

City Of San Diego
COUNCIL PRESIDENT PRO TEM JIM MADAFFER
DISTRICT SEVEN

MEMORANDUM

M-08-02-04 Please refer to this number when responding to this memo

DATE: February 22, 2008

TO: Elizabeth Maland, City Clerk

FROM: Council President Pro Tem Jim Madaffer *Jim Madaffer*

SUBJECT: Draft Charter Language for Mayor & Councilmembers Salaries

Attached is draft Charter language setting forth a new process in setting the Mayor and City Councilmember salaries. I would like this included in the back-up for in the back up for Item 200 of the City Council's Monday, February 25 agenda. The draft language explains that the Mayor's salary be 100% equivalent to that of a Superior Court Judge and City Councilmembers' salaries 75% of a Superior Court Judge's salary.

In the attached memo, I have requested the City Attorney draft charter language the matches this request, but wanted to include my recommended language in the spirit of providing appropriate 72 hour noticing. Attached is the memo I sent to the City Attorney and my suggested language changes.

Thank you for your assistance with this matter.

JM/af

cc: Mayor Jerry Sanders
City Councilmembers
Michael Aguirre, City Attorney

Attachments

000579

ORDINANCE NUMBER O- (NEW SERIES)

DATE OF FINAL PASSAGE

AN ORDINANCE SUBMITTING TO THE QUALIFIED
VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL
ELECTION CONSOLIDATED WITH THE STATEWIDE -
PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE
PROPOSITION AMENDING THE CITY CHARTER BY
AMENDING ARTICLE III, SECTION 12.1;
AMENDING ARTICLE IV, SECTION 24.1; REPEALING SECTION 41.1;
ALL RELATING TO SETTING
THE SALARIES OF THE MAYOR AND COUNCILMEMBERS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and WHEREAS, by Ordinance No. O- , adopted on , 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for all elected City officials by authorizing a Salary Setting Commission to establish the salaries of all the elected officials; and WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of San Diego, as follows: Section 1. That one proposition amending the City Charter by amending Article III, section 12.1; amending Article IV, section 24.1; and repealing Article V, section 41.1, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

PROPOSITION

Section 24.1: Mayor's Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

~~(Addition voted 11-06-1973; effective 12-07-1973.)~~

Commencing on July 1, 2009, the salary of the Mayor shall be set at the base salary then in effect for Superior Court judges of the State of California. The salary of the Mayor shall thereafter be adjusted on July 1 of each fiscal year, if necessary, to reflect the then current base salary of Superior Court judges of the State of California. Any such adjustment shall be made administratively and shall not require any action by the Mayor or City Council."

Section 12.1: Councilmanic Salaries

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

~~(Addition voted 11-06-1973; effective 12-07-1973.)~~

Commencing on July 1, 2009, Council member salaries shall be set at seventy five percent (75%) of the base salary then in effect for Superior Court judges of the State of California. Council member salaries shall thereafter be adjusted on July 1 of each fiscal year, if necessary, to reflect seventy five percent (75%) of the then current base salary of Superior Court judges of the State of California. Any such adjustment shall be made administratively and shall not require any action by the Mayor or City Council."

Section 41.1: Salary Setting Commission

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two year terms and four are appointed for four year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

~~(Addition voted 11-06-1973; effective 12-07-1973.)~~

The City attorney's office is requested to add in the remaining language including the ballot question title/summary.

000581

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
Michael J. Aguirre
CITY ATTORNEY

200
2/25
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

February 22, 2008

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

IMPARTIAL ANALYSES OF BALLOT MEASURES

INTRODUCTION

On February 4, 2008, in compliance with the San Diego Municipal Code and state elections law, the City Council considered whether to request that the City Attorney prepare impartial analyses of ballot measures to be submitted to voters in the June 2008 sample ballot. In a change of procedure, however, the Council deferred a decision on whether to publish the analyses until *after* the City Attorney prepares the analyses and submits them to the Council for pre-publication review. Several Council members expressed concern the analyses would not be "impartial."

The Council voted to direct the City Attorney to prepare the analyses for Council review *before* it decides whether to direct that they be published in the sample ballot mailed to all registered voters.

This office expressed concerns at the February 4, 2008 Council meeting that the pre-publication review is contrary to the San Diego Municipal Code and state elections law. Rather, attorneys from this office explained that the proper procedure to contest impartial analyses submitted to the City Clerk for publication in the sample ballot is to bring an action in state court. The elections calendar provides adequate time for legal challenge before such materials would be published.

We further explained that the legal procedure does not call for a legislative body to first review an impartial analysis before it is submitted for publication. Permitting Council review or approval before publication could even prompt a concern about the impartiality of the process and trigger a challenge.

This report provides the legal basis for our concerns and raises a concern the Council is acting outside of legal authority.

DISCUSSION

I. Local and State Law Do Not Provide for Pre-Publication Review of a City Attorney's Impartial Analysis of a Ballot Measure.

San Diego Municipal Code section §27.0505 (Preparation of Impartial Analysis) governs the drafting of impartial analyses for local ballot measures in City elections. It states in relevant part:

- (a) The City *Council* may direct the City Attorney to prepare an impartial analysis of any proposed *measure*. If so directed, the City Attorney shall place the impartial analysis on file in the Office of the City *Clerk* no later than 5:00 p.m. on the date established in accordance with the City *Clerk's* administrative calendar for the *election* on the proposed *measure*.
- (b) The analysis shall not exceed 500 words in length.
- (c) The City Attorney shall prepare the analysis to show the effect of the *measure* on existing law and what the *measure* would do.
- (d) If the *measure* affects the organization or salaries of the Office of the City Attorney, the City *Council* may direct an appropriate official to prepare the analysis.¹
- (e) The analysis shall be printed in the *voter pamphlet* preceding any arguments for and against the proposed *measure*. . .

S.D. Muni. Code §27.0505 [Emphasis added.]

The Municipal Code makes clear that once the Council directs the City Attorney to prepare the analysis, the City Attorney *shall* file it with the clerk. There is no intervening review.

The Municipal Code closely follows the California Elections Code. Section 9280 of the state code states in relevant part:

Whenever any city measure qualifies for a place on the ballot, the governing body may direct the city elections official to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected. **The city attorney shall prepare an impartial analysis** of the measure showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the city attorney, the governing board may

¹ None of the impartial analyses discussed at the February 4, 2008 Council meeting involve "the organization or salaries of the Office of the City Attorney." Thus, it is appropriate for the analyses to be prepared by the City Attorney.

direct the city elections official to prepare the impartial analysis.
The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed 500 words in length. . .

Cal. Elec. Code §9280 [emphasis added].

Both the Municipal Code and state elections law contemplate a process in which a legislative body directs the City Attorney to prepare an impartial analysis of a ballot measure and then to submit it – *without intervening review* – to the appropriate elections official for automatic placement in the ballot pamphlet. Neither law permits a legislative body to direct preparation of an analysis, review the analysis, and only after review, direct its publication.

II. Local and State Law Require An Impartial Analysis Not to Be False or Misleading and Provide a Process to Challenge Language that Does Not Comply.

Elections Code section 9280, on which our local Code is based, plainly places the “duty” to properly prepare an impartial analysis “showing the effect of the measure on the existing law and the operation of the measure” squarely on the City Attorney. *Horwath v. City of East Palo Alto*, 212 Cal. App. 3d 766, 775 (1989) (defect in impartial analysis misled voters about nature of rent rollback legislation).

If a voter believes an impartial analysis submitted to the clerk is flawed or “partial,” the appropriate action is to seek a writ of mandate or injunction to compel the amendment or deletion of the wording on the ground that it is false or misleading. This action is taken during the 10-day examination period after the analysis is submitted to the City Clerk, but before its publication by the County Registrar of Voters.² S.D. Muni. Code §§ 27.0404, 27.0515.

A writ of mandate or injunction shall be issued “only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements” for ballot materials. *See, Mandicino v. Maggard*, 210 Cal. App. 3d 1413, 1415 (1989) (ballot argument, not impartial analysis, flawed and modified by court); *King v. Lewis*, 219 Cal. App. 3d 552, 555 (1990) (sought amendment or deletion of impartial analysis on ground it was “misleading in its entirety,” “false in several sections,” biased and otherwise not in compliance with state election law; court ordered two word changes and one deletion, but held changes did not significantly alter meaning of impartial analysis, thus denying attorneys’ fees to prevailing party).

The state has a strong interest in providing the electorate with accurate information in voter pamphlets. Since the pamphlet accompanies the ballot, it appears to give an imprimatur of official approval to its contents and is likely to carry greater weight in the minds of the voters than normal campaign literature. *Hull v. Rossi*, 13 Cal. App. 4th 1763, 1768 (1993), citing

² There is also the potential for post-election review. *Horwath v. City of East Palo Alto*, 212 Cal. App. 3d at 775-780.

Washburn v. City of Berkeley, 195 Cal. App. 3d 578, 585 (1987) (deleting from a ballot argument blatantly false statements that opponents of the measure had acted illegally); *see also*, *Patterson v. Board of Supervisors*, 202 Cal. App. 3d 22, 30 (1988) ("... the voter's pamphlet can have a substantial impact on the equality and fairness of the electoral process.").

The "courts recognize the importance of an impartial ballot summary to the election process and to interpretation of legislative intent thereafter." *Washburn*, 195 Cal. App. 3d at 585. The purpose of statutes like the one governing preparation of impartial analyses is to "foster a more informed electorate by supplying correct information about the measures appearing on any given ballot." *Horwath*, 212 Cal. App. 3d 766, 777 (1989). Laws "designed to protect the elector from confusing or misleading information should be enforced so as to guarantee the integrity of the process." *Chase v. Brooks*, 187 Cal. App. 3d 657, 663 (1986). Courts have also held the "public's right to an accurate impartial analysis" is an "important right" within the meaning of a statute providing for private attorney general fees. *Hull*, 13 Cal. App. 4th at 1768.

CONCLUSION

The Council's request for pre-publication review of the City Attorney's impartial analyses of ballot measures is a procedure not contemplated by local or state law. The Council has no jurisdiction to revise wording once the materials have been prepared. Permitting Council review or approval before publication could prompt concern about the impartiality of the process and lead to a legal challenge. To the extent a voter or City official contends the analyses are flawed, he or she may challenge the wording in court, in the manner set forth by law.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

000585

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: February 21, 2008
TO: Elizabeth Maland, City Clerk
FROM: City Attorney
SUBJECT: Title, Summary, and City Attorney Impartial Analysis for Ballot Measure –
Charter Amendments Relating to Managed Competition

The City Council has directed the City Attorney to prepare an impartial analysis of a measure the City Council has approved for submission to the voters on the June 3, 2008 ballot. The measure seeks voter approval to amend the City Charter to exempt from the Managed Competition process the core public safety services provided by City police officers, firefighters, and lifeguards. The measure was approved as Ordinance O-19714 on February 4, 2008.

Official Title and Summary

EXEMPTION OF CORE PUBLIC SAFETY SERVICES FROM MANAGED COMPETITION.

Shall the voters approve an amendment to the Charter to exempt from the Managed Competition process the core public safety services provided by police officers, firefighters, and lifeguards who participate in the City's Safety Retirement System?

City Attorney's Impartial Analysis

On November 7, 2006, the voters approved an amendment to the City Charter to allow the City to employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by a person employed in the Classified Service, while maintaining service quality and protecting the public interest.

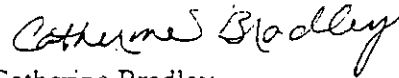
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The City Council has authorized the placement of a proposition on the ballot seeking voter approval to amend Article VII, section 117 of the City Charter to exempt from the Managed Compensation process the core public safety services provided by police officers, firefighters, and lifeguards who participate as safety members in the City's Retirement System.

In general, the safety members that participate in the City's retirement system include sworn officers of the City Police Department, uniformed members of the City Fire Department, and full-time City lifeguards. The "core public safety services" are those services performed by police officers, firefighters and lifeguards that are essential for public protection and safety.

MICHAEL J. AGUIRRE, City Attorney

By



Catherine Bradley

Chief Deputy City Attorney

CB:als

000587

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: February 21, 2008
TO: Elizabeth Maland, City Clerk
FROM: City Attorney
SUBJECT: Title, Summary, and City Attorney Impartial Analysis for Ballot Measure –
Charter Amendments Relating to the Strong Mayor form of Government.

The City Council has directed the City Attorney to prepare an impartial analysis of a measure the City Council has approved for submission to the voters on the June 3, 2008 ballot. The measure seeks voter approval to amend the City Charter to require the City Council to submit to voters at the June 2010 election Charter amendments making the Strong Mayor form of government permanent; adding a Council seat; and, when the ninth seat is filled, increasing the Council votes required to override a mayoral veto. The measure was approved as Ordinance O-19715 on February 4, 2008.

Official Title and Summary

CHARTER AMENDMENTS RELATING TO PERMANENCY OF THE STRONG MAYOR
FORM OF GOVERNANCE.

Shall the voters approve an amendment to the Charter to require the City Council to submit to voters at the June 2010 election Charter amendments making the Strong Mayor form of government permanent; adding a Council seat; and, when the ninth seat is filled, increasing the Council votes required to override a mayoral veto?

City Attorney's Impartial Analysis

Background. For 75 years the City of San Diego had a Council-Manager form of government, in which a nine-member elected City Council, including a Mayor, governed and set policy for the City, and a City Manager acted as Chief Executive Officer, running day-to-day affairs.

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In November 2004, voters approved a five-year trial period to begin January 1, 2006 to test a different structure called a Strong Mayor, or Mayor-Council, form of governance. In this form of governance, the elected Mayor is no longer a member of the Council, but becomes the City's Chief Executive Officer, responsible for running City affairs.

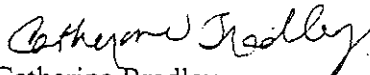
During the operative trial period, the Council is an eight-member body and the Mayor may require the Council to reconsider most of the matters it passes (ordinances, resolutions, and changes to the budget) by using a veto. The Council may override the Mayor's veto with the same number of votes needed to pass the matter. Most matters require five votes of the eight Council members to pass, although some matters require six votes.

Article XV, section 255 of the Charter states that the five-year trial period remains in effect until December 31, 2010, at which time the Article will be repealed, returning the government to its previous Council-Manager form.

Proposal. The City Council has authorized a ballot proposition seeking voter approval to amend Article XV, section 255 of the San Diego City Charter. If adopted, this change would require the City Council to place a single measure on the ballot at the June 2010 election to have voters decide whether: 1) the Strong Mayor form of government should become permanent effective January 1, 2011; 2) to increase the number of City Council districts from eight to nine in conjunction with the next City redistricting process after the national census in 2010; and 3) to increase the number of Council votes needed to override the Mayor's veto to two-thirds of the nine-member Council, after the ninth Council seat is filled by election. At that point, six of nine votes would be required to override matters the Council passed by either five or six votes.

MICHAEL J. AGUIRRE, City Attorney

By


Catherine Bradley
Chief Deputy City Attorney

JAK:CB:als

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THE CITY ATTORNEY
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Michael J. Aguirre
CITY ATTORNEY

February 22, 2008

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ADDITIONAL MAYOR AND COUNCILMEMBER SALARY-SETTING AND
ADJUSTMENT OPTIONS

INTRODUCTION

On January 14, 2008, the Council directed preparation of a ballot measure providing that future salaries of all elected officials be set by a reconstituted Salary Setting Commission to whom the Council would delegate its discretion to set those salaries. The Council suggested deleting the requirement it adopt an ordinance, yet still subject the salary decision to the referendum process. This Office prepared the measure (O-2008-94) with some modifications. In order to meet referendum requirements, the measure also retains the requirement that the Council adopt an ordinance establishing the salaries set by the Commission with no discretion to modify the salaries the commission established. See City Att'y Report RC-2008-3 (Jan. 29, 2008).

At its February 4, 2008 meeting, the Council directed this Office to work with the Independent Budget Analyst [IBA] to provide the Council with additional measures that would link the Mayor and Councilmembers' salaries to some external guide that would set and/or adjust salaries. One suggestion was to link Councilmembers' salaries to judicial salaries. Another was to automatically link future increases to the Consumer Price Index [CPI].¹

This report reviews existing City Charter provisions and processes used by other charter-regulated legislative bodies. As directed, this Office submits two additional measures for the Council's consideration that automatically set and adjust the salaries of the Mayor and City Councilmembers by charter and/or by link to an external reference. One measure (O-2008-116) links the salaries and annual adjustment to the salaries of Superior Court judges as set and adjusted by state law. The other (O-2008-117) would establish salaries by charter for two years,

¹ City Charter section 11.1 prohibits the City Council from adopting any scheme or formula "which seeks to fix the compensation of City of San Diego employees at the level of compensation paid to employees of any other public agency. . . not accountable to the People of the City . . . or any scheme or formula which seeks to fix, establish or adjust the compensation of . . . employees at the level of the largest cities in California or the state of California." This section appears inapplicable to the City Council and the Mayor because they are elected officials, not "employees" of the City of San Diego.

and thereafter adjust them upward according to the San Diego Consumer Price Index for Urban Consumers [CPI-U].

These proposals leave to the Council a number of decisions for the final language that would be submitted to the voters. Those decisions and choices are summarized in the Conclusion.

DISCUSSION

I. Existing Charter Provisions.

The City Charter currently permits the salaries for Councilmembers and Mayor to be adjusted every two years by Council ordinance, after considering the salary recommendations made by a seven-member Salary Setting Commission, appointed by the Civil Service Commission. The Council has the discretion to set the salaries below the recommended amount. The ordinance setting Council salaries is expressly made subject to referendum. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary), and 41.1 (Salary Setting Commission).

II. Salary-Setting Processes Used by Other Charter-Regulated Legislative Bodies.

Other charter-regulated bodies establish their salaries in different ways. We review several of them for Council consideration and as background for some of the changes submitted in the two measures.

A. San Diego County.

Similar to the City Charter, but without the limitation of a Commission recommendation, the San Diego County Charter requires the salaries of its legislative officers, the Board of Supervisors, to be "established by ordinance of the Board." San Diego County Charter § 402. In 1977, the Supervisors enacted an ordinance linking their salaries to a percentage of the salaries paid and adjusted by state law for judges of the San Diego Municipal Court. Until 1981, the percentage was 76% of those salaries. In 1981 and thereafter, it was to increase to 80% of those salaries. See San Diego County Ordinance No. 4933 (June 14, 1977). In 1998, the County ordinance was amended to link Supervisor salaries to 80% of the salaries of Superior Court judges (Ordinance No. 8970).

1. Judicial Salary Setting.

The salaries of Superior Court judges in the state of California are set by the Legislature and may not be reduced during a term of office. Cal. Const. art. 3 § 4(b).² California Government

² Article 3, section 4 (b) of the California constitution provides: "(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge

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Code section 68202 sets the salaries of Superior Court judges and section 68203³ sets how salary increases occur. Yearly increases in judicial salaries are linked to the average percentage salary or dollar limitation increases given State employees. Cal. Gov't. Code § 68203 (a). The Legislature may also provide judges with additional separate increases in salaries as it did with eight and a half percent (8.5%) increases in 2001 and 2007. Cal. Gov't. Code § 68203(d) and (e).

B. City of Los Angeles.

In Los Angeles, another charter city, the salaries of the Mayor, Council members and other elected officials are established by Charter and linked to judicial salaries. Los Angeles City Charter § 218(a).⁴ Councilmember salaries are set as those of Municipal Court judges or a successor court. The Mayor is paid 30% more than a Councilmember. The Controller is responsible for ascertaining the judicial salaries and for setting and adjusting the salaries of the elected officials.

been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law."

³ California Government code section 68203 provides: "(a) On July 1, 1980, and on July 1 of each year thereafter, the salary of each justice and judge named in Sections 68200 to 68202, inclusive, and 68203.1 shall be increased by the amount that is produced by multiplying the then current salary of each justice or judge by the average percentage salary increase for the current fiscal year for California State employees; provided, that in any fiscal year in which the Legislature places a dollar limitation on salary increases for state employees the same limitation shall apply to judges in the same manner applicable to state employees in comparable wage categories. ¶ (b) For the purposes of this section, salary increases for state employees shall be those increases as reported by the Department of Personnel Administration. ¶ (c) The salary increase for judges and justices made on July 1, 1980, for the 1980-81 fiscal year, shall in no case exceed 5 percent. ¶ (d) On January 1, 2001, the salary of the justices and judges named in Sections 68200 to 68202, inclusive, shall be increased by the amount that is produced by multiplying the salary of each justice and judge as of December 31, 2000, by 8 1/2 percent. ¶ (e) On January 1, 2007, the salary of the justices and judges identified in Sections 68200 to 68202, inclusive, and 68203.1 shall also be increased by the amount that is produced by multiplying the salary of each justice and judge as of December 31, 2006, by 8.5 percent."

⁴ Los Angeles Charter section 218 provides in pertinent part: "(a) . . . ¶(1) *Salaries.* Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted. ¶ . . . The Mayor shall be paid a salary that is 30% more than that of a Council member. ¶ The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise"

(3) *Operative Date of Changes in Salaries.* The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges."

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C. City of Anaheim.

Anaheim is a charter city that sets the compensation of its elected officials by adopting the method used by general law cities as established by state law. Anaheim City Charter § 503.⁵

1. Salary Setting for General Law Cities.

California Government Code § 36516⁶ and related sections govern how Council salaries are set in general law cities. The statute sets a schedule of salaries depending on city population, with the maximum salary at \$1000 per month for officials from cities exceeding 250,000 in population. Cal. Gov't. Code § 36516(a). Salaries may be set above or below the schedule if the voters approve the change, but salaries may not exceed 5% more than the last adjustment. Cal. Gov't. Code § 36516(b) and (c). State law prohibits enacting any ordinance that would provide "for automatic future increases in salary." Cal. Gov't. Code § 36516 (c).

III. Two Measures for Consideration.

This Office has prepared two additional ordinances proposing measures to change the City Charter that would either: (1) link the Mayor's and Councilmembers' salaries to a percentage of the salaries of judges of the Superior Court (O-2008-116); or (2) set fixed increases in the salaries of Councilmembers for two consecutive years, thereafter linking future annual salary increases to upward movement in the CPI-U for San Diego (O-2008-117).

⁵ Section 503 provides in pertinent part: "The members of the City Council, including the Mayor, shall receive as compensation for their services as such a monthly salary in such amount as established in accordance with, and limited by, the provisions of law applicable to the salaries of City Council members in general law cities as set forth in Section 36516 of the Government Code of the State of California or any successor provision thereto. . . ."

⁶ California Government Code section 36515 provides in pertinent part: "(a) A city council may enact an ordinance providing that each member of the city council shall receive a salary, the amount of which shall be determined by the following schedule: ¶ . . . (6) In cities over 250,000 population, up to and including one thousand dollars (\$1,000) per month. . . . ¶ (b) At any municipal election, the question of whether city council members shall receive compensation for services, and the amount of compensation, may be submitted to the electors. If a majority of the electors voting at the election favor it, all of the council members shall receive the compensation specified in the election call. Compensation of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner. ¶ (c) Compensation of council members may be increased beyond the amount provided in this section by an ordinance or by an amendment to an ordinance but the amount of the increase may not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. No salary ordinance shall be enacted or amended which provides for automatic future increases in salary. . . ."

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Both measures would amend sections 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary) and 290(b) (Council Consideration of Salary Ordinance and Budget; Special Veto Power), and repeal section 41.1 (Salary Setting Commission). We describe later how the measures differ. The identical aspects of both measures accomplish the following:

- Change the title of section 12.1 to Councilmember Salaries.
- Repeal section 41.1 establishing the Salary Setting Commission.
- Amend section 290(b) to require the budget to include the salaries established by section 12.1 and 24.1. Prohibit the Council from modifying those salaries, and, consequentially, the Mayor from vetoing them.
- Set the annual salary of the Mayor as thirty-three and one third percent (33.3%) (or such other percentage the Council sets) more than that of a Councilmember as set and adjusted by section 12.1. The Mayor presently makes \$100,464, or 33.3% more than a City Councilmember (\$75,386).

Both measures also provide two options for Council consideration. One would cap any annual adjustment increase to Mayor or Council salaries at no more than five percent (5%) of their existing salaries, even if the state law increases for judges or the CPI-U increases exceed 5%. This is patterned on the state law limiting the salaries of Council members in general law cities that has been adopted by the City of Anaheim. A second option creates an "escape clause," allowing the Council some flexibility by permitting it to suspend operation of the sections in the event of a fiscal emergency for one fiscal year. For example, similar language appears in San Diego Municipal Code sections 22.0228(e) [relating to the budget and library appropriations] and 22.0229(e) [relating to the budget and regional park improvements]. The Council may accept either, neither, or both of these options.

A. Linking Council and Mayoral Salaries to the Salaries of Judges of the Superior Court (O-2008-116).

This measure links Councilmember salaries to a percentage of the salary of a California Superior Court judge. Future upward increases in salary would be linked automatically to state law adjustments to judges' salaries, unless the Council elects either or both options described above. This measure would accomplish the following:

- Effective July 1, 2008, link the annual amount and adjustments of the salary of Councilmembers to a given percentage (to be set by the Council) of the salaries of judges of the Superior Court of the State of California as established by state law, similar to the procedure in Los Angeles. Using current salaries as a reference point,

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City Councilmembers earn about 44% (\$75,386) of the current salary of Superior Court judges (\$171,648).

- Require the Auditor and Comptroller to ascertain the judicial salary and adjustments to that salary set by state law, and calculate the salaries of the Council. Require the City Manager to incorporate those salary amounts into the City's budget, subject to balanced budget requirements.

B. Setting Salaries by Charter and Adjusting According to the CPI-U for San Diego (O-2008-117).

This measure establishes Councilmember salaries by Charter for two years, with future increases linked to the annual CPI-U for San Diego. We leave for the Council the decision how much of a salary increase should be included for each year. We set two consecutive years for the fixed increases before salaries are annually, and automatically, adjusted upward with increases in the CPI-U. The two-year period is subject to Council revision. An uncontrolled upward adjustment might not occur if the Council elects to include a cap on the annual increase, or the escape clause option in the measure.

This measure would accomplish the following:

- Effective July 1, 2008, and July 1, 2009, set fixed increases in the annual salaries of Councilmembers (to be set by the Council). Effective July 1, 2010 (subject to Council approval) and each July 1 thereafter, adjust those salaries upward to reflect any upward change in the Urban Consumer Price Index for San Diego [CPI-U] for the preceding calendar year ending December 31.
- Require the Auditor and Comptroller to set and adjust the salaries of the Council and Mayor annually. Require the City Manager to incorporate those salary amounts into the City's budget, subject to balanced budget requirements

CONCLUSION

Councilmembers indicated their wish that voters have a voice in these matters. Existing Charter provisions permit the voters to use the referendum process each time the Council adopts an ordinance setting the Mayor's and the Council's salary. The measure proposed earlier (O-2008-94) continued voter access by referendum by requiring the Council to adopt an ordinance including the salaries set by the reconstituted Salary Setting Commission, without the discretion to modify those salaries. The two measures accompanying this report will require voter approval for the initial charter amendments. However, if adopted, the changes would not permit voter review of annual salary increases by referendum. Future voters may use the initiative process to repeal or amend these Charter provisions.

REPORT TO THE
HONORABLE MAYOR
AND CITY COUNCIL

-7-

February 22, 2008

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In the event the Council chooses to submit either of these measures to the voters, the Council must also decide the following:

For the salary-setting measure based on a percentage of judicial salaries (O-2008-116):

- Determine the percentage of the salary of a Superior Court judge that will be used to set Councilmembers', and, consequentially, the Mayor's salaries.

For the measure setting increased salaries, and adjusting according to the CPI-U (O-2008-117):

- Establish the annual salary for Councilmembers to be effective July 1, 2008 and July 1, 2009.
- Approve, or modify, two years as the number of years the Charter will establish the salaries for Councilmembers.

For either measure:

- Decide if the Mayor's salary should be thirty-three and one-third percent (33.3%) more than that of Councilmember's salaries, or to increase or decrease that percentage.
- Decide whether to include either, both, or neither optional clauses that would cap annual increases at no more than five percent (5%) over existing wages, regardless of state actions affecting judicial salaries, or larger increases in the CPI-U, and/or provide an escape clause in the event of a fiscal emergency.

This Office awaits direction from the Council and will be available at the hearing to answer questions.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

JAK:als
RC-2008-6



000597

THE CITY OF SAN DIEGO

200
2/25/08

February 15, 2008

Subject: 2008 Salary Setting Commission's Recommendation

Honorable Mayor and City Council Members:

By this letter, The Salary Setting Commission hereby submits its salary recommendations for Fiscal Years 2009 and 2010. What follows is the Commission's official proposal for increases to be incorporated into the Salary Ordinances for Fiscal Years 2008-09 and 2009-10, pursuant to the requirements of Sections 12.1, 24.1, and 41.1 of the City Charter.

THE COMMISSION'S PROCESS

The Commission met on approximately five occasions between early November of 2007 and late January of 2008. We reviewed the comprehensive data compiled by or through the City of San Diego's Personnel Department staff. It included, but was not limited to, the types of data which have become standard over the years, such as: salary surveys for comparable positions in other cities; current and historic increases in the Consumer Price Index; and the salaries of other managerial and executive level City of San Diego employees. This time around it also included a consideration of the new Strong Mayor form of government, and the impact that has had on the duties and responsibilities of the Mayor and Council.

With the assistance of staff, the Commission wrote to hundreds of community and civic organizations, civic leaders, past and present City Councilmembers, and members of the electronic and print media, informing them the salary evaluation process was once again underway, and inviting participation and comment. Two logistical planning sessions were followed by three public meetings, all of which were held downtown at the Civic Center Plaza Building; anyone and everyone was welcome to attend and express their opinions. Ultimately, a total of only three individuals from the public participated.

For those who could not attend in person, written correspondence was also encouraged; but nothing new was received.

The Commission first studied the facts, figures, comparisons and trends in some depth, and then explored a very broad range of approaches and rationales. The goal was to develop appropriate salary recommendations for the Mayor and Councilmember *positions*, given all of the usual considerations, priorities and criteria. This included:

- Adequacy of current salary, in view of San Diego's cost of living
- The importance of establishing salaries high enough to attract qualified candidates
- The existing benefits package accompanying the positions
- Comparable data, including the Consumer Price Index and rates of inflation
- Comparable data, including Mayor and Councilmember salaries in various/comparable California, Western, and other cities
- The current salaries of other City management type personnel, including but not limited to the Police Chief, the Fire Chief, and the Mayor's own Chief Operating Officer, among others

**Salary Setting Commission**

1200 Third Avenue, Suite 300 • San Diego, CA 92101

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- Historical salary data for the Mayor and Councilmembers, including the number of Salary Setting Commission recommendations which have been rejected, and
- The heavy responsibilities and extreme importance of the positions

During the review process, each Commissioner evaluated the data independently. The information was then revisited together, as a group, which was when widely varying perspectives emerged. Two Commission Members personally supported raises which would essentially mirror the increase in the Consumer Price Index (only); two other Members attempted to pass a resolution recommending that the current salaries jump by more than 100%.

In response to these public debates, the residents who came to comment expressed additional concerns, criticisms and suggestions, all of which were also considered and discussed.

At the conclusion of all that, the Commission, as a group, was eventually able to pass a compromise set of recommendations, however one Commissioner made it clear the he was voting for the recommendations despite the fact that they were *too low*; while another Commissioner voted "nay" because they were *too high*.

RECOMMENDATION:

Since 1998 the cost of living in San Diego has increased approximately 35%; Mayor and Council salaries have not kept pace. The Salary Setting Commission attempted, at a minimum, to both account for that substantial increase and, in addition, to try and bring salaries for the Mayor and Council *roughly* in line with salaries in other comparable cities. We also wanted to see them move somewhat closer to the dramatically higher salaries enjoyed by various City Department Heads, such as the Police and Fire Chiefs, the City Attorney, etc.

The Commission believes that the Mayor and Council positions have become increasingly more demanding as the spending power of their pay checks has declined. And a majority of Commissioners have long been troubled by the fact that the salaries of the Mayor and Council have not only fallen far behind the salaries of other important, but comparatively less critical, public and elected positions in San Diego, they even lag behind the salaries of some of the support staffers who assist the Mayor and Council.

With that backdrop in mind, and despite the broad range of philosophies, the Commission approved the following salary recommendations:

<u>EFFECTIVE DATE</u>	<u>CITY COUNCIL</u>	<u>MAYOR</u>
Current	\$75,386	\$100,464
7-1-08 (32.65%/29.40% increase)	\$100,000	\$130,000
7-1-09 (25.00%/15.38% increase)	\$125,000	\$150,000

Despite what it understands and anticipates will be strong political pressure to do otherwise, the Salary Setting

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Commission strongly encourages the City Council to adopt, without adjustment, each of its recommendations, so that San Diego can effectively attract and retain qualified candidates in the future. The citizens of this city will benefit from a pay scale that allows interested, capable, hard-working people who do *not* possess independent wealth to run for public office. The failure of the Mayor and Council to accept the Commission's recommendations, *yet again* would do a disservice to all San Diegans.

On behalf of the Commission, I wish to be heard on these recommendations and would be happy to respond to any questions the Council may have at that time.

Respectfully submitted,



Deb C. Pedersdotter, President
Salary Setting Commission

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January 29, 2008

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

SUPPLEMENTAL REPORT REGARDING MEASURES TO AMEND THE CITY CHARTER

INTRODUCTION

On January 14, 2008, the City Council directed the City Attorney to prepare draft language for ballot measures to amend the City Charter and to submit to voters in June 2008. The Council discussed nine matters raised in a January 11, 2008 memorandum from Council President Scott Peters, Council President Pro Tem Jim Madaffer, and Councilmember Kevin Faulconer. The memorandum incorporated nine of eleven recommendations from the Final Report of the Charter Review Committee (CRC), with certain modifications.

The Council is scheduled to discuss the measures on February 4, 2008. We previously raised concerns about certain language proposed by the CRC in the City Attorney Report to Council RC-2008-1 (Jan. 14, 2007). This supplemental report includes the language this Office recommends be used to achieve the Council's goals. We recommend four measures that combine related matters in compliance with the Separate Vote Rule, and explain material changes from phrasing that had been suggested by the CRC or the Council.

DISCUSSION

I. Compliance with the Separate Vote Rule.

The City Council expressed a desire that the nine matters it discussed on January 14, 2008 be consolidated and presented to voters in two measures. Mindful of the Separate Vote Rule, however, this Office has concluded that the nine matters under consideration are better submitted to voters in four measures.

We recently explained the Separate Vote Rule is a limitation on a legislature's power to submit constitutional amendments to the voters. *See* City Att'y Rept. to Council RC 2007-17 (Nov. 2, 2007); *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735 (2006). The rule requires that all the proposed changes submitted in one measure must be "reasonably germane" to each other. "Germane" means "closely related" or "relevant." Webster's New Universal Unabridged Dictionary 767 (2nd ed. 1979).

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The importance of complying with the Separate Vote Rule was explained by the Court in *McPherson*. Violations of the Rule can result in a pre-election court order that bars submission of the matter to the voters, or post-election invalidation of a measure improperly submitted to the voters in a single package. The lower court in *McPherson* had entertained a preelection challenge, and had then ordered that the two measures it found improperly joined be severed and presented to the voters separately. The California Supreme Court expressly disapproved the pre-election challenge remedy of bifurcation, holding that "bifurcation is not a remedy for violation of the separate-vote provision. . . ." *McPherson*, 38 Cal. 4th at 782. This means that if the City Council were to improperly combine measures, and that action was successfully challenged in court before the election, the combined measure could not be submitted to voters at all.

The Council has indicated a desire to act as expeditiously as possible to enact the charter changes that will permit greater financial responsibility and clarity in the roles of City financial officers. This Office advises a cautious approach to compliance with the Separate Vote Rule in order to avoid any delay in submitting those reforms to the voters.

The four measures this Office recommends are:

1. A measure to require the Council to place before voters on the June 2010 ballot a single measure to decide the permanency of Article XV, the creation of a ninth Council district, and an increase in the number of Council votes required to override a mayoral veto.
2. A measure that permits greater fiscal responsibility by creating a separate Office of the Independent Budget Analyst (IBA) to advise the City Council; separating responsibilities for the accounting and auditing functions of the City into two separate officers- a Chief Financial Officer (CFO) and City Auditor; creating an Audit Committee to oversee the City Auditor; and expressly requiring the City budget be balanced.
3. A measure to exempt the services provided by City police officers, firefighters and lifeguards from the Managed Competition process permitted by section 117.
4. A measure to change the way the salaries of elected officials are established.

II. Amending Charter Section 255 to require a vote on the permanency of a Mayor-Council form of government and related issues on the June 2010 ballot.

On January 14, 2008, the Council indicated that a ninth Council seat should be linked to the permanency of the Mayor-Council form of government, and the increase in the number of veto-override votes should be linked to the creation of that district. In June 2010, those and other

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changes related to the Mayor-Council form of government could be enacted in a single, although lengthy, measure.

The Council also suggested that Charter sections 28 and 270 be amended to clarify the role of the IBA, and to authorize creation of that Office even in the absence of Article XV. Instead, this Office suggests that a separate section be enacted in conjunction with the creation of other City fiscal officers. This would permit Council establishment of the IBA as a separate City office, setting out certain minimal qualifications and duties for the Office currently now found in section 270 and portions of the Municipal Code. (See below.)

III. Financial Responsibility Measure.

This measure includes sections designed to increase the City's financial responsibility, such as permitting the Council to establish an Office of the Independent Budget (IBA) to advise the Council; separating the City's accounting and auditing functions into two separate offices- a Chief Financial Officer (CFO) and City Auditor; creating an Audit Committee to oversee the City Auditor, independent of other City fiscal management; removing the need for Council confirmation of the City Treasurer; and expressly requiring the City budget be balanced.

A. Chief Financial Officer.

The establishment of this office involves amendment of section 39 to change the name of the Office of Auditor and Comptroller to the CFO and to transfer to this office the bulk of the Charter responsibilities previously held by the Auditor and Comptroller.

Related changes include adding the CFO (and IBA and new City Auditor) to the list of officers in the unclassified service by amending section 117 (a)(7); deleting section 265(b)(10) as duplicative; and modifying section 265 (b)(11) to remove references to section 39 and the Auditor and Comptroller for the duration of Article XV. This last change removes from the CFO the right of appeal upon dismissal formerly held by the Auditor and Comptroller. It is consistent with the new structure that separates the former single office into two offices, with the CFO under the authority of the City Manager (Mayor), and the City Auditor under the authority of the new Audit Committee and City Council.

This Office has replaced use of the title "Chief Financial Officers" suggested by the CRC in the sentence midway through section 39 with the more generic term "chief municipal fiscal officers" to ensure duties imposed on other municipal fiscal officers are imposed upon this City's CFO.

The CRC's proposed change to section 45 to remove the need for Council confirmation of the City Manager's (Mayor's) appointment of City Treasurer is included without change.

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B. Audit Committee

This proposal adds section 39.1, creating an Audit Committee to oversee the City Auditor and audit functions of the City as suggested by the CRC. This version deletes the City Attorney as a member of the screening committee as the Council requested. It addresses legal concerns raised in our January 14, 2008 report by incorporating the following changes to the proposed section for the Council's consideration:

- To ensure the Council, not the screening committee, controls the appointment of the public members of the Audit Committee, the draft sets a suggested minimum number of five candidates as the pool from which the Council must select the three public members of the Audit Committee, and establishes that the City Council appoint the public members of the screening committee as follows: "The three (3) public members of the Audit Committee shall be appointed by the City Council from a pool of at least five (5) candidates to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the Independent Budget Analyst and two (2) outside financial experts appointed by the City Council."
- This draft modifies the CRC's proposed language in section 39.1 to avoid conflict with section 39 as follows: "The Audit Committee shall have oversight responsibility regarding the City's ~~accounting~~, auditing, internal controls and any other financial or business practices required of this Committee by this Charter ~~or City ordinance.~~"
- The CRC intended that the Council have the authority to impose additional duties and responsibilities upon the Audit Committee by ordinance, as proposed at page 78 of its final report. The proposed last sentence of the new section provided: "The Council shall specify the powers and duties of the Audit Committee." Instead, we have included the following new language which more closely mirrors the intent of the CRC and avoids potential future conflicts. "The Council may specify additional responsibilities and duties of the Audit Committee by ordinance as necessary to carry into effect the provisions of this section."
- As section 39.1 is phrased, the Audit Committee only recommends the Auditor's salary and budget, but does not set that salary or budget. Accordingly, we have deleted the legally unnecessary sentence from section 39.1 that provides: "~~This section shall not be subject to the provisions of section 11.1.~~"

C. City Auditor

This proposal adds section 39.2, creating the Office of City Auditor, and amends section 111 to clarify that responsibilities of the Auditor and Comptroller to annually audit the accounts of City Departments, and to investigate and audit the accounts of City officers who die, resign or are removed, are transferred to the City Auditor. The language proposed by the CRC regarding

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the termination of the City Auditor has been modified to reflect the Council's motion. The section 111 changes also permit the Audit Committee to audit the accounts of the City Auditor upon his or her death, removal or resignation. The measure includes the Council request that the Auditor comply with Government Audit standards; other changes to section 39.2 to address the legal issues mentioned in our January 14, 2009 report; and provides the City Auditor with investigatory authority like that provided to the CFO.

Addressing the Council's request that the City Auditor have control over the appointment and dismissal of subordinates, we have provided the Auditor with appointing authority. Section 30 provides the Auditor with removal authority. In addition, we have amended section 117(a)(11) to include as unclassified employees of the City generically described staff of the City Auditor.

- This measure adds language to section 39.2 to provide investigatory authority to the City Auditor like that provided the CFO under section 82 as follows: "The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon before him any officer, agent or employee of the City, any claimant or other person, and examine him upon oath or affirmation relative thereto."
- Upon the City Council's motion, the following modifications have been made to the CRC's recommended language for section 39.2:

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee. Upon the recommendation of the Audit Committee, the City Auditor may be removed for cause by a vote of four-fifths two-thirds of the members of the Audit Committee subject to the right of the City Auditor to appeal to the Council to overturn the Audit Committee's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Audit Committee. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the Council no later than 30 days after the appeal is filed with the Clerk. The Council may override the decision of the Audit Committee to remove the City Auditor by a vote of six members of the Council. The City Auditor shall be the appointing authority of all City personnel authorized in the department through the

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normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

- For the reasons given in our January 14, 2008 report, we have deleted the legally irrelevant and misleading sentence at the end of the first paragraph in the CRC's proposed section 39.2 that provides: ~~"Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law."~~
- Because these proposed sections do not involve setting compensation, enacting legislation, or setting City policy, they need not be exempted from section 11.1, and the sentences should be deleted in the CRC versions of proposed section 39.2 and amended section 111 that provide ~~"This section shall not be subject to the provisions of section 11.1."~~
- The change to section 117(a)(11) would provide: "(11) Industrial Coordinator All assistants and deputies to the Independent Budget Analyst; all assistants and deputies to the City Auditor."

D. Independent Budget Analyst

This measure adds new section 39.3 to the Charter that permits the Council to establish by ordinance a new City Office of Independent Budget Analyst independent of the permanency of Article XV. It is intended to supersede the decision in *Hubbard v. City of San Diego*, 55 Cal. App. 3d 380 (1976). Section 39.3 clarifies the duties of the Office, and incorporates some eligibility requirements for the Office currently found in the Municipal Code. See SDMC § 22.23003. We recommend repeal of what would be a duplicative section 270(f) (and renumbering the rest of that section) in conjunction with the addition of section 39.3.

As with the City Auditor, the section gives the IBA appointing authority. Section 30 provides the IBA with removal authority. In addition, we have amended section 117(a)(11) to include as unclassified employees of the City generically described staff of the IBA. See report section III (D) above for language.

The new section 39.3 that we recommend provides:

Section 39.3. Independent Budget Analyst.

Notwithstanding any other provision of this Charter, the City Council shall have the right to establish by ordinance an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall appoint the Independent Budget Analyst, who shall serve at the pleasure of the Council and may be removed from office by the Council at any time. Any person serving as the Independent Budget Analyst shall have the

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professional qualifications of a college degree in finance, economics, business, or other relevant field of study or relevant professional certification. In addition, such appointee shall have experience in the area of municipal finance or substantially similar equivalent experience. The Independent Budget Analyst shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

E. Balanced Budget

This measure also amends section 69 to require the City to enact a balanced budget and revised budgets throughout the fiscal year. In response to concerns raised in our January 14, 2008 report and Council's request, this version provides the Council with authority to adopt its alternatives to any proposed budgetary revisions submitted by the City Manager (Mayor). As we suggested in our January 14, 2008 report, the need for this change to the Charter is unclear in light of the section's existing language that requires the budget summary "to show the balanced relations between the total proposed expenditures and the total anticipated income and other means of financing the budget for the ensuing year," and other rules requiring municipal budgets be balanced.

However, if the amendment is to be submitted to the voters, we conclude it would be reasonably germane to the other changes proposed in *this* broad measure, which addresses a number of methods for the City to improve its fiscal responsibility. Council members suggested the change to section 69 could be joined with the measure changing how the salaries of elected officials are to be established. But that proposal (see below) removes Council discretion in setting such salaries and does not appear relevant to matters in this measure.

- We revise the suggested CRC language for section 69 to ensure the Council may adopt its alternates to any proposed revised budget as follows: "No longer than 60 days from the date of submittal by the Manager of said revised budget to the Council, the Council shall adopt the proposed revisions or itseffer alternative revisions to ensure the budget is balanced."
- We also revise the final proposed new sentence of section 69 to include posting of any budget revisions as follows: "The City shall post copies of the budget and any revisions on appropriate electronic media, such as the internet, to allow the public full access to the document."

As phrased, there is still a question whether the process established with the changes to section 69 was intended to apply to *every* proposed modification of the budget or amendment to the appropriation ordinance, or only to major budget revisions that might impact a number of departments, such as a mid-year adjustment. Because the section uses words such as "revisions to the budget" and "revised budget," we may assume the intent of this new paragraph is to encompass significant budget revisions arising out of insufficient funding for the City's

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operations. It is unclear whether a court would agree with that assessment. We also note that use of the word "budget" in the proposed new paragraph implies any proposed budget revisions would be subject to the "back and forth" provisions of the special veto process described in Charter section 290(b), for so long as Article XV is effective.

Last, if Council decides to submit the change to section 69 to the voters we also recommend section 290 (b)(2)(B) be amended to replace the reference to section 71 with section 69 as follows:

(2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.

(A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.

(B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by the vote of at least five members of the Council a two-thirds vote of the Council as set forth in Section 285. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section ~~71~~69.

IV. Exemption from Managed Competition.

The Council has recommended the CRC's proposal to ensure services provided by City employees who are members of the City's safety retirement system are not subject to the Managed Competition process. The CRC's proposal adds subsection (d) to section 117 and mirrors language found in the Municipal Code. *See* SDMC § 22.3702(b). Because only City services are subject to Managed Competition, we suggest changes to the proposed language to reflect that, and to amend section 117(c) to include the exemption. These modifications from those previously approved for the Municipal Code may possibly subject the proposal to "meet and confer" requirements. This proposed change is unrelated to any other proposed measure and must be submitted separately to the voters. Our January 14, 2008 report also notes the lack of legal necessity for this Charter amendment so long as the Municipal Code provides this exemption.

Our proposal to amend section 117(c) would add to it this language, showing the variance with the language proposed by the CRC: "The City services provided by Police officers, firefighters, and lifeguards who participate in the City's Safety Retirement System shall not be subject to Managed Competition."

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V. Setting the Salary of Elected Officials

On January 14, 2008, the Council indicated its desire to submit the CRC proposals that the future salaries of all elected officials be set by a reconstituted Salary Setting Commission. The Council suggested deletion of the requirement the Council adopt an ordinance, yet still subject the salaries to the referendum process. Our report of January 14, 2008 provides some background for the CRC's suggestions and proposed an additional amendment to section 280 that we have incorporated into this version of the measure for the Council's approval. See City Att'y Report RC 2008-1 (January 14, 2008). In addition, we deleted the reference to the Mayor in section 12.1; set the appointment date for commission members in section 41.1 at March 1 to more easily accommodate section 12.1's reporting date of February 15; and retained the current requirement that the City Council, consistent with its budget approval authority, provide the necessary funding for the Commission instead of the City Manager as recommended by the CRC.

The Council's request to delete the requirement the Council adopt the ordinance setting the salaries the Commission sets for elected officials, yet retain the referendum process for the decision, is problematic. In pertinent part, the Charter reserves the referendum process *only* to "any ordinance passed by the Council." § 23. There is another section (5.1) that crafted a process that is subject to referendum without adoption of an ordinance. The CRC did not consider that process, and this Office has not had adequate time to study whether it could be a successful model for a salary setting process. Accordingly, the version of this measure submitted for approval retains the requirement Council adopt an ordinance. The measure's language gives the Council no discretion in the process. It *requires* the Council to adopt an ordinance establishing the salaries set by the Commission. It delegates the Council's entire authority and discretion in setting the salaries of elected officials, including their own, to this appointed Commission, *exempting the process from the Charter limitations of section 11.1.*

This measure does not appear to have the same urgency as the fiscal responsibility measure. A delay in submission of the matter would allow the Council and this Office to review alternatives that were not considered by the CRC related to a change in the process of setting the salaries of elected officials.

We have carefully considered the Council's request that this measure and the amendment to section 69 (requiring the City to propose a balanced budget) be submitted to the voters in a single measure. We do not see how changes requiring a balanced budget for the City are reasonably germane to changes delegating to an appointed body the Council's authority to set the salaries of elected officials. We conclude that submitting both items together would violate the Separate Vote Rule and recommend against such action.

January 29, 2008

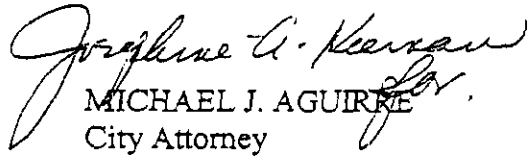
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CONCLUSION

We await further direction from the Council regarding these measures and are ready to answer related questions at the February 4, 2008 hearing.

Respectfully submitted,


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RC-2008-3

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January 14, 2008

REPORT TO THE HONORABLE
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CHARTER AMENDMENTS PROPOSED BY THE CHARTER REVIEW
COMMITTEE FINAL REPORT DATED OCTOBER 4, 2007

INTRODUCTION

This report highlights legal issues for the City Council to consider in its discussion of the 11 recommendations of the Charter Review Committee [Committee] for the 2008 ballot.¹ This Office attended many of the Committee's meetings and provided general legal guidance on matters that raised significant legal problems. However, the decision was made to postpone a detailed and thorough analysis of any proposed Charter amendment language until after the Council decided which measures it intended to place on the ballot. This decision was necessary due to the broad range of issues reviewed by the Committee's three subcommittees in a relatively short time period and the uncertainty as to whether the amendments would be approved by the full Committee and Council.

The Council should consider the following matters as it reviews the Committee's recommended Charter amendments:

(1) The legal requirement that ballot measures submitted to voters must comply with the Separate Vote (Single Subject) Rule. *See* City Attorney's Report to the Rules Committee (November 2, 2007).

(2) The timing of some of the proposed Charter amendments is interdependent upon the passage of others. For example, if voters fail to approve a measure making "permanent" the Mayor-Council form of government, other provisions would not make legal sense as currently phrased. The Council may wish to consider deliberate sequencing of proposals for voter review.

(3) The phrasing of some proposed amendments is vague or conflicts with other Charter provisions not considered by the Committee; some sections may be legally unnecessary; and some fail to address necessary matters.

¹ This report does not address the 17 items reviewed by the Committee for later ballots or for which no changes were recommended.

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DISCUSSION

The Committee's report separates the proposed amendments into three categories:

- (1) interim strong mayor and legislative tightening; (2) financial reform and the Kroll report; and
- (3) duties of elected officials. This report follows the same format.

INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

1. Sunset Clause Revision for the Mayor-Council Form of Government

Charter section 255 currently provides that the Mayor-Council form of government will be in effect for five years, until December 31, 2010, at which point it will be "automatically repealed and removed from the Charter." The Committee proposes the following change:

Section 255: Operative Date; Future Action by Voters

This Article shall remain in effect until December 31, 2014, at which time it *shall become permanent* unless voters have approved a ballot measure to extend, shorten or repeal the effective period of this Article. (emphasis added.)

The Committee Report states that this provision "extends the trial period" of Charter Article XV. Committee Report at 8, 11 and 46. This is inaccurate. By removing the sunset provision, the trial period will cease to exist. This amendment would make the Mayor-Council form of government as "permanent" as any other Charter provisions, unless the City Council or the voters pro-actively initiate future ballot measures to change the Article. If the Council chooses to submit the Committee's recommendation to the voters, the measure as presented must not be misleading or false. See, Cal. Elect. Code § 9295, *Martinez v. Superior Court*, 142 Cal. App. 4th 1245, 1248 (2006). In that regard, the ballot materials must more accurately reflect that the change does not extend the trial period but makes "permanent" the Mayor-Council form of government.

2. Increased Votes for Veto Override

Charter sections 285 (Enactment Over Veto) and 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) currently require the City Council to reconsider any ordinance or resolution the Mayor has vetoed. The City Council may overrule the veto with the same number of votes it took to enact the legislation. These Charter sections fall within Article XV, and will sunset with it at the end of 2010 unless the voters determine otherwise.

Number of Votes to Override Mayoral Veto. The Committee proposes amendments to Charter sections 285 and 290 to increase the number of votes required to override a mayoral veto to "two-thirds" of the Council or, if a two-thirds vote is required for passage, then the veto override requires one vote more than the number of votes required to pass the ordinance or

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resolution. The report and text of the proposed changes refer to this as a "two-thirds" Council majority. Committee Report pp. 8, 12-13 and 47.

If the Council decides to submit the Committee's recommendation, it may only do so if it accurately describes the ballot measure. With a continuing eight-member City Council, the Independent Budget Analyst [IBA] calculates the percentage of Council votes necessary to override a veto as *three-fourths* for regular ordinances and resolutions and, in certain matters it, *could surpass 85%*, far greater than an actual two-thirds vote. If the Council desires this to be placed before voters, it must provide a more accurate description of the actual percentages involved.

The increased veto override provisions may be sufficiently related to the permanency of the Mayor-Council form of government to be placed together on the same ballot measure without violating the separate vote rule. However, if the permanency of Article XV is not submitted to the voters with this veto override provision, the Council should assess the need to submit it to the voters before the end of the trial period in 2010. If the Council declines to place permanency of the Mayor-Council form of government on the ballot, the proposed changes to section 285 and 290 should be submitted separately from other recommended changes (except as noted below) to comply with the Separate Vote Rule.

Reference to the Balanced Budget Requirement. The Committee's amendment to section 290(b)(2)(B) also includes the following change: "In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section ~~74~~69." Charter section 71 (Preparation and Passage of Annual Appropriation Ordinance) does not specifically require a balanced budget. As noted in the Committee Report, balanced budget requirements are referred to or implied in various other sections of the Charter, including Charter section 69. See Committee Report, p. 19. Accordingly, the reference to Charter section 69 is more appropriate.

The Committee Report also suggests section 69 (Fiscal Year and Manager's Estimate) be amended to include a more specific balanced budget requirement. Report pp. 9 and 60-61. The proposed changes to section 69 may or may not be submitted to the voters, or accepted by the voters. Established accounting principles require the City budget to be balanced, as may other state laws. If this amendment is to be submitted to the voters, a better practice may be to use a more generic phrase, as an example, "... and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 69."

3. Eleven-Member City Council

Section 270(a) (The Council) currently provides that the Council is composed of eight members. Section 255(b) provides that the people "reserve the right . . . to consider increasing the number of Council districts to *nine* at the time of the next City Council district

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reapportionment which follows the national decennial census in 2010." (emphasis added.)
Section 270 is found in Article XV, and will sunset if and when the article does.

The Committee proposal would amend *only* Charter section 270 as follows: "(a) The Council shall be composed of ~~eight~~eleven councilmembers elected by district, and shall be the legislative body of the City. . . . ¶ (j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1." Committee Report, pp. 8, 14 and 49.

The Committee's recommendation for an odd number of Council districts is prompted in part by the desire to avoid Council tie votes during the operative period of Article XV. However, mandating that the redistricting process for the increased number of districts follow Charter section 5 is problematic. Section 5 *requires* the process to occur *after* the next Decennial Census (2010), and to be completed within nine months of the receipt of the census results. Although the redistricting process for eleven districts might be completed by the end of December, that date coincides with the sunset provisions of Article XV. If Article XV sunsets, so will section 270 and the authorization for eleven districts. The Charter would then revert to its previous requirement of eight Council districts, with the Mayor again a member of the City Council, creating an odd number of votes (9).

If Article XV and section 270 do not sunset, and there is a need to increase the number of Council districts, it is also unclear whether the Committee's proposed change to section 270 would legally accomplish this, at least without corresponding changes to other Charter provisions. For example, the following Charter sections could be impacted: section 4 (refers to eight districts); section 5.1 (requires redistricting based on eight districts by numbers 1 to 8); section 10 (lists individual districts and dates for elections); section 12 (provides dates for each district's elections); and section 270(c) (states the number of Council votes needed for a majority). Any serious attempt to increase the number of City Council districts should include corresponding changes to other interrelated Charter sections.

It is theoretically possible under the Separate Vote Rule that this change could be submitted to voters in one measure with other proposed changes to Article XV. However, as indicated above, it is unlikely this single change would actually accomplish this goal. We recommend any increase in the number of City Council districts be considered separately by the voters after the Mayor-Council form of government has been made permanent, and incorporate corresponding changes to related Charter sections.

4. Independent Budget Analyst

This measure would amend Section 270 (The Council), subdivision (f), to clarify that the Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council. Committee Report, pp. 8, 15 and 50. The Council provided this authorization when it established the Office by ordinance and codified the

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provisions in the San Diego Municipal Code. SDMC §§ 22.2301 - 22.2306. Whether the Committee's proposed change to section 270(f) could be combined with other measures, or must be submitted separately to the voters, will depend on whether other matters related to the Mayor-Council form of government are also submitted to the voters.

FINANCIAL REFORM AND THE KROLL REPORT

The Committee's proposals in recommendations 5 (Chief Financial Officer), 6 (Audit Committee) and 7 (City Auditor) separate the City's accounting and internal auditing functions, both functions currently handled by the Office of Auditor and Comptroller (Section 39). Under these proposals, the accounting function would be served by a new Chief Financial Officer. The CFO would have supervisory powers over the Treasurer and certain other financial and accounting functions. The internal auditing function would be handled by a new City Auditor, an office supervised and directed by a new City Audit Committee. We address legal aspects of each recommendation separately. However, the general changes suggested in these recommendations do appear reasonably germane to each other and could be presented together in one measure for voter approval.²

5. Chief Financial Officer

Recommendation 5 proposes amendments to Charter sections 39, 45, 117, and 265, briefly summarized as follows:

Section 39 (City Auditor and Comptroller) changes the title of the Auditor and Comptroller to the Chief Financial Officer [CFO]; provides that Office with oversight over treasury and other city fiscal functions; and provides that it assume other duties previously required of the Auditor and Comptroller.

Section 45 (City Treasurer) removes City Council confirmation authority for the appointment of the City Treasurer, whether by the Mayor or City Manager (if Article XV sunsets).

Section 117 (Unclassified and Classified Services) replaces the City Budget Officer with the Chief Financial Officer in the listing of unclassified positions in the service of the City.

Section 265 (b)(10) (The Mayor) makes the corresponding title change to permit the Mayor to appoint the CFO for the duration of Article XV. Committee Report, pp. 8, 15-16 and 51-54.

² The City Attorney has proposed the City Auditor and Comptroller be changed to an elected office with specified duties and responsibilities; and without a separation of the functions of the two offices, or creation of an Audit Committee.

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The Committee's proposed amendments to section 39 raise the following issues:

- The proposed section 39 provides in part, "He or she shall perform the duties imposed upon ~~City Auditors and Comptrollers~~ Chief Financial Officers by the laws of the State of California" This language is unclear. By using a title that may not be used in certain laws of California, the proposed change could fail to impose on this City's Chief Financial officer duties imposed on other municipal fiscal officers. We suggest replacement of the title with a more generic phrase such as: He or she shall perform the duties imposed upon chief municipal fiscal officers ~~City Auditors and Comptrollers~~ by the laws of the State of California"
- Proposed section 39 includes a new phrase: "The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer." This is paraphrased from section 260(b), which gave the broad powers previously exercised by the City Manager to the Mayor under Article XV. It will transfer the accounting duties and investigatory authority held by the Auditor and Comptroller under Charter sections 70, 71, 71a, 72, 73, 74, 75, 77, 80, 83, 84, 86, 87, 88, 89, 110, 112, 126, 144 to the CFO. The Council may wish to consider providing investigatory authority like that found in Charter section 82 to the proposed new City Auditor, the office charged with auditing the CFO and all other City Departments.
- Proposed section 39 provides that the CFO "shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions." This language could be problematic because it may conflict with similar "oversight responsibility" provided to the new Audit Committee in proposed section 39.1. See Item 6, below.

6. Audit Committee

The Committee's proposal adds new section 39.1 (Audit Committee) to the Charter to create a five-member Audit Committee and to establish its authority and duties. Three members of the public would serve four-year terms and be appointed by the City Council from a pool of candidates who meet certain requirements, as recommended by a "screening committee."³ The remaining two members of the Audit Committee would be City Councilmembers appointed by the Council, one whom would chair of the committee. The Committee would direct and review the work of the City Auditor, recommend the salary of the City Auditor, and recommend the budget for the office to the City Council. The Committee would also recommend to the Council the retention of the City's outside auditor, and the auditor's removal if appropriate. It would resolve all disputes between City management and the outside auditor related to the City's

³ The six-member screening committee is composed of four designated public officers and two "outside financial experts."

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financial reports, reporting the disputes to the Council. Additional duties would be established by ordinance.⁴ Committee Report, pp. 8-9, 16-17 and 55-56.

If the City Council desires to submit the Committee's recommendation for ballot review, it should be aware that much of the section is vague and raises many unanswered questions. For example, the "screening committee" is tasked with creating a pool of nominees from which the Council appoints the three public members. This results in the screening committee sharing the appointment authority with the City Council. *See Gillespie v. San Francisco Public Library Comm'n*, 67 Cal. App. 4th 1163, 1173 (1998). Yet, there is no mention how the two "outside financial experts" of the screening committee are to be selected. Also, are the experts serving on the screening committee eligible to be in the pool of candidates? Should the Council member of the screening committee also be a member of the Audit Committee, or should those Council Committee members be excluded from serving on the screening committee? Should the section establish staggered terms for the initial terms of the public members to ensure continuity, such as terms of two, three and four years? Should the section set a minimum number of pool members from which the Council selects the three public members? Absent such minimum, the screening committee could send a pool of only three candidates, resulting in the screening committee, rather than the Council, controlling the appointment process.

Proposed section 39.1 also provides: "The Audit Committee shall have oversight responsibility regarding the City's *accounting*, auditing, internal controls and *any other financial or business practices* required by this Charter or City ordinance." (emphasis added.) This language appears overly broad and may conflict in part with the CFO's oversight responsibilities established under proposed section 39.⁵ We suggest modifying the language as follows: "The Audit Committee shall have oversight responsibility regarding the City's ~~accounting~~, auditing, internal controls and *any other financial or business practices* required of this Committee by this Charter ~~or City ordinance~~."

Last, section 39.1 provides, "This section shall not be subject to the provisions of section 11.1."⁶ However, as proposed, the Committee only "recommends" the Auditor's salary and budget. It does not *set* that salary. There appears to be no legal necessity to exempt section 39.1 provisions from section 11.1 limitations. Accordingly, this sentence may be deleted.

⁴ The creation of this committee by Charter amendment alleviates certain concerns expressed in City Att'y Report No. 2006-25 (Sept. 1, 2006) at pages 4-5.

⁵ To the extent this language was intended to provide *access* to all City records and departments to facilitate an audit function, that authority is provided in section 39.2 directly to the City Auditor, who is tasked with this function.

⁶ Section 11.1 in part precludes the City Council from delegating its legislative authority to raise or spend money (including setting salaries).

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7. City Auditor

The Committee's proposal adds new section 39.2 (Office of the City Auditor) to the Charter to establish the office of City Auditor, and amends section 111 (Audit of Accounts of Officers). Under section 39.2, the City Auditor would be appointed for a term of ten years by the City Manager in consultation with the Audit Committee. The City Auditor would report and be accountable to the Audit Committee. The Audit Committee may remove the Auditor with a four-fifths vote, subject to appeal to the City Council. This section also provides the Auditor with access to the records of all City departments, offices and agencies. The changes to section 111 clarify that certain former responsibilities of the Auditor and Comptroller are to be transferred to the City Auditor, namely those that annually audit the accounts of City Departments, and that investigate and audit the accounts of City officers who die, resign or are removed. The section 111 changes also permit the Audit Committee to audit the accounts of the City Auditor upon his or her death, removal or resignation. Committee Report, pp. 9, 17-18, 57-59.

If the Council elects to submit the Committee's proposed sections to the voters for approval, it may wish to consider providing the City Auditor with similar investigatory authority to that provided to the CFO. This could mirror language found in Charter section 82 (Examination and Investigation of Claims by the Auditor and Comptroller). Section 82 authorizes the Auditor and Comptroller to: "investigate a claim and for that purpose may summon before him any officer, agent or employee of the City, any claimant or other person, and examine him upon oath or affirmation relative thereto . . ." Proposed section 39.2 gives the City Auditor access to all City records and requires City Officers, agents and employees to "cooperate" (presumably with the City Auditor). It does not provide separate authority to the City Auditor to actually investigate, a function ordinarily assumed by a City Auditor.

The Council could accomplish this by adding such authority to section 39.2, and inserting a missing phrase as follows:

The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon any officer, agent or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto.

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In addition, the Council may wish to consider deleting or revising other language in these sections that is legally irrelevant. For example, proposed section 39.2, related to the City Auditor, provides at the end of the first paragraph: "Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law." Presumably this sentence refers to provisions of the Ralph M. Brown Act. The Act's provisions have long been held to be matters of statewide concern, making them applicable to all City entities that meet the Act's requirements, regardless whether it is expressly incorporated by local laws. *San Diego Union v. City Council*, 146 Cal. App. 3d 947, 958 (1983). It is unclear why this provision is incorporated into the section that creates the office of City Auditor. Generally speaking, the Act's provisions would not apply to meetings the City Auditor holds. However, they would apply to meetings of the Audit Committee, created by Charter section 39.1. Moreover, it is misleading to suggest the Act *requires* closed sessions. The Act *permits* closed sessions under certain limited circumstances. We recommend deletion of this sentence from proposed section 39.2 before it is submitted to the voters.

Sections 39.2 and 111, like section 39.1, each also provide: "This section shall not be subject to the provisions of section 11.1." The proposed sections do not appear to involve setting compensation, enacting legislation, or setting City policy. Thus, they need not be exempted from section 11.1. We also recommend deletion of this sentence from these sections.

8. Balanced Budget

The Committee proposes that Charter section 69 (Fiscal Year and Manager's Estimate) be amended to expressly provide the City adopt a balanced budget. It defines a balanced budget to mean "there is available funding from all sources sufficient to cover projected expenditures for said fiscal year." It adds a new paragraph to section 69, requiring the City Manager to monitor the budget during the year and to provide the City Council with proposed revisions to the budget, setting a 60-day timeline for the City Council to adopt the revisions. It requires the City budget to be posted in electronic media on the internet. Committee Report, pp. 9, 18-19, 60-61.

We raise the following issues:

- If this proposed change is to be submitted to the voters, this Office recommends it be submitted as a separate measure for voter determination from any of the other proposed changes pursuant to the Separate Vote Rule. See City Att'y Report No. 2007-17 (Nov. 2, 2007). The subject matter of this change does not appear "reasonably germane" to other Committee-proposed changes.
- The proposed language of the full new paragraph in the section is ambiguous and could be problematic without clarification. The full new paragraph added to section 69 provides in part: "No longer than 60 days from the date of submittal by the City Manager of said revised budget, the City Council shall adopt the proposed revisions or offer alternative

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revisions to ensure the budget is balanced." The word "shall" implies the Council *must* accept the revisions proposed by the Manager and may only "offer" proposed alternatives. It does not expressly provide the City Council with the authority to *adopt* its offered alternatives. If the Council wishes to forward this proposal to the voters it may wish to consider the following corrective language: "... the City Council shall adopt the proposed revisions or ~~offer its~~ offer its alternative revisions ~~that to~~ that ensure the budget is balanced."

- It is unclear whether the proposed new paragraph was intended to apply to every proposed modification of the budget, or only to major budget revisions that might impact a number of departments, such as a mid-year adjustment. Because the section uses words such as "revisions to the budget" and "revised budget," we assume the intent of this new paragraph is to encompass significant budget revisions arising out of insufficient funding for the City's operations.
- The use of the word "budget" in the proposed new paragraph also implies the proposed revisions would be subject to the "back and forth" provisions of the special veto process described in Charter section 290(b), for so long as Article XV is effective.
- Last, the final new sentence of section 69 requires the "budget" to be posted electronically. It is not clear whether revisions to the budget must also be posted electronically. If desired, the following phrase could be added to the last sentence as follows: "The City shall post copies of the budget and any revisions on appropriate electronic media, such as the internet, to allow the public full access to the document."

DUTIES OF ELECTED OFFICIALS

9. Managed Competition

Section 117(c) was added to the City Charter by passage of Proposition C at a special election in November 2006. It permits the City to contract with independent vendors to provide certain City services now performed by classified employees, a process called "Managed Competition." In October 2006, the Mayor and City Council adopted a resolution of intent that City services provided by members of the public safety retirement system (police, fire, and lifeguard) would not be subject to Managed Competition, if Proposition C was passed by the voters. The resolution directed the City Attorney to incorporate language providing this protection in any implementing ordinances should the measure pass. See R-301949 (Oct. 9, 2006). After it passed, the Council adopted an implementing ordinance (O-19566, January 9, 2007) providing in part that "Police Officers, Fire Fighters and Lifeguards who participate in the Safety Retirement System will not be subject to Managed Competition." SDMC §22.3702(b).

The Committee proposes Charter section 117 be amended to add a new subsection (d) that would help ensure services provided by City safety employees are not subject to the Managed Competition process. The proposed subsection mirrors Municipal Code section

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22.3702(b) and provides: "(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition." Committee Report, pp. 9, 19-20 and 62-63.

The Council may wish to consider the following:

- The "safety" employees are currently protected under the San Diego Municipal Code. There is no legal need to seek a Charter change.
- The subject of this proposal is unrelated to the sunset of Article XV and may be presented to the voters at any election. However, its subject matter is not "reasonably germane" to any of the other proposed Committee changes. Accordingly, if presented to the voters, it must be as a separate proposition as required by the Separate Vote rule.
- This Office needs to further review whether this proposal would be subject to a "meet and confer" requirement.

10. Modification of Section 40

Existing Charter section 40 (City Attorney) sets forth the duties and responsibilities of the City Attorney. The Committee report proposes that section 40 be completely rewritten. The arguments made to support the proposal are in the Committee's report at pages 20-21. A strong minority of the Committee objected.⁷ See, minority report at Appendix III, pp. 6-7. See also Committee Report, pp. 9 and 64-69.

The Committee contends that the language in Charter section 40 is ambiguous. This contention is curious in light of the fact that the section has been in effect for decades without questions or concerns about the wording. Moreover, the proposed language is ambiguous in many respects. For example, what precisely *are* the "matters over which the Charter gives the Mayor responsibility," especially if the Mayor-Council form of government ceases to exist?

One of the most serious legal concerns is that the amendment presupposes that Article XV has been made permanent, by incorporating language implying the Mayor has powers separate from the City Council, and has veto power over Council actions. For example, the new subsections on "Control of Litigation" and "Settlement of Litigation" provide the following: "... In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the *Mayor or* the Council in accordance with this section . . ."; "The *Mayor* shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility;" "The *Mayor and Council* shall establish by ordinance a process for the approval or rejection of settlement involving money damages;" and "The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of

⁷ The vote was 9 in favor and 5 against, with one Committee member absent.

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money, *subject to veto of the Mayor, and Council override of the Mayor's veto*, as provided under this Charter." (emphasis added.) But, the permanency of Article XV has yet to be decided. If Article XV sunsets, these changes would make no legal sense with a Mayor acting only as part of the City Council.

Finally, this subject is not "reasonably germane" to any of the other proposed Committee changes. Accordingly, if presented to the voters, it would need to be presented as a separate proposition as required by the Separate Vote rule.

11. Salary Setting for Elected Officials

The Charter currently provides that the salaries for Councilmembers and Mayor be set by ordinance of the City Council, requiring the Council to vote on its own salaries after consideration of the recommendation of a 7-member Salary Setting Commission, appointed by the Civil Service Commission. The ordinance setting Council salaries is expressly made subject to referendum. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary), and 41.1 (Salary Setting Commission). The salary of the City Attorney is set by the City Council and made part of the Appropriation Ordinance. Charter § 40 (City Attorney).

In general, the Committee's proposal requires the Salary Setting Commission to recommend to the Mayor and Council the salaries of all City elected officials every two years. It *requires* the Council to adopt an ordinance setting those salaries, with such ordinance to be subject to referendum and exempt from any Mayoral veto. The amendments to Charter section 41.1 (Salary Setting Commission) are patterned after Article III, section 8 of the California constitution. Section 41.1 revisions also set minimum eligibility requirements for Commission members and guidelines for them to consider in establishing these salaries. Committee Report pp. 9, 21-22 and 70-73.

If the Council desires to submit these suggested changes to the voters, the Council may wish to consider the following points first.

- The proposed change to section 12.1 contains phrasing that connects it to Article XV, which may or may not become permanent. The new language provides: "The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV." If the goal is to exempt this ordinance from a Mayoral veto for the duration of Article XV, it would be better to delete the phrase "and shall not be subject to any veto provision of Article XV." Instead an amendment to Charter section 280 (Approval or Veto of Council Actions by Mayor) could be included with this series of changes that would provide a new subsection as follows "(a). . . (6) The ordinance setting the salaries of elected officials in accordance with section 12.1."

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The changes suggested in this item are germane to each other, but are not reasonably germane to any of the other proposed measures related to the Mayor-Council form of government. Thus, they should be submitted to the voters for a separate vote from other suggested measures.

CONCLUSION

The Charter Review Commission considered a broad range of issues over a relatively short period of time. Many of the recommendations were adopted by the Committee at a single meeting and without sufficient public input and scrutiny. We urge the Council not to do the same. Charter amendments must not be hastily submitted to the voters. There are many important issues facing the City, especially as they relate to the City's financial structure and oversight. Important questions have not been fully discussed, such as whether the City Auditor should be elected, rather than appointed. There has also been much disagreement over the composition of the Audit Committee. These are important issues that should be fully vetted so that the best proposals can be put to the voters. Further, we note that some of these issues do not require a Charter amendment and may be addressed through ordinances adopted by the City Council, as occurred with the creation of the Audit Committee and clarification of the exemption of safety members from Managed Competition. This Office will provide additional analysis and advice as the City proceeds to review these and other proposed Charter amendments.

Respectfully submitted,



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RC-2008-1

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CITY OF SAN DIEGO

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000625

November 2, 2007

REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

CITY BALLOT MEASURES SUBMITTED TO VOTERS ARE SUBJECT TO THE
SEPARATE VOTE (SINGLE SUBJECT) RULE

INTRODUCTION

The San Diego City Council Rules, Open Government, and Intergovernmental Relations Committee is scheduled to consider the final report of the 2007 San Diego Charter Review Committee, issued on October 4, 2007 [CRC Report]. The report proposes that the City Council submit a series of amendments to the voters during 2008. CRC Report at 8-9. The report broadly separates the changes into three major groups: interim strong mayor and legislative tightening, financial reform and the Kroll report; and duties of elected officials. This Office anticipates the Committee and the Council may request advice on whether these measures may be combined in a single ballot measure. This Report discusses the requirement that each measure submitted to voters address only a single subject so that each subject may be voted on separately.

DISCUSSION

I. The Separate Vote and Single Subject Rules.

The separate vote rule is expressed in the last sentence of Article XVIII, section 1 of the California constitution, which provides: "Each amendment [to the state constitution] shall be so prepared and submitted that it can be voted on separately." Although this provision has existed in one form or another in the state constitution since 1879,¹ it was only in 2006 that the California Supreme Court interpreted its scope and construction. In *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735 (2006) [*McPherson*], the court decided the separate vote rule limited the authority of the state legislature to package disparate proposed constitutional amendments in a single measure, and that it should be construed consistently with single subject rule, a kindred provision governing voter-originated constitutional initiatives under Article II, section 8(d) of the constitution. *Id.* at 738.

¹ The 1879 version provided: "Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately." *Id.* at 747.

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Both the separate vote rule and the single subject rule serve the same purpose—to bar submission of measures that “might cause voter confusion or might constitute ‘logrolling’—that is, the practice of combining two or more unrelated provisions in one measure, thereby forcing a single take-it-or-leave-it vote on matters that properly should be voted upon separately.” *Id.* at 749 (citations omitted) and 765-766. The goal in classic logrolling is to bundle a provision attractive to the voters with one that is less attractive, “simply to increase the likelihood that the proponent’s desired proposal will be adopted.” *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1151 (1999).

II. Charter Measures Submitted by the City Council to the Voters Are Subject to the Separate Vote (Single Subject) Rule.

Courts have not yet determined that the separate vote rule of the California Constitution is a matter of statewide concern, applicable to the submission of charter amendments to city voters by their legislative bodies. In San Diego’s case, the wait for such decision is unnecessary because the Charter requires the City Council to comply with the separate vote rule in submitting charter amendments to the voters.

Charter section 223 was adopted with the 1931 City Charter. It provides the Charter “be amended in accordance with the provisions of Section Eight, Article Eleven, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution.” The 1931 version of Article XI, section 8 of the California Constitution, incorporated by section 223 of the City Charter, permitted city legislative bodies to submit multiple proposals to amend a City charter that were “. . . to be voted upon by the electors separately. . . .” Former Cal. Const. Art XI § 8 (Cal. Stats. 1931).²

The virtually identical language of these provisions indicates the intent to incorporate the separate vote rule from the California constitution into the City Charter, making it applicable to charter amendments submitted by the City Council to the voters. This interpretation is also consistent with Charter section 275(b) that requires City ordinances: “. . . shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title,”³ and section 27.0503 of the *San Diego Municipal Code*, requiring the City Council to “decide by ordinance the content of the ballot question for each ballot measure. . . .”

² The full sentence in former Article XI, section 8 refers both to amendments proposed by the legislative body and the electors. It provides: “In submitting any such charter or amendment separate provisions, whether alternative or conflicting, or one included in the other, may be submitted at the same time *to be voted on by the electors separately*, and, as between those so related, if more than one receive a majority of votes, the proposition receiving the larger number of votes shall control as to all matters in conflict.”

³ Superseded Charter section 16 also provides: “All ordinances . . . shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title.”

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III. The "Reasonably Germane" Test.

The test of whether a particular measure submitted to the voters meets or violates the separate vote rule is the same test used to determine a violation of the single subject rule. *McPherson*, 38 Cal. 4th at 763. The court construes both in an "accommodating and lenient manner so as not to unduly restrict the Legislature's or the people's right to package provisions in a single bill or initiative." *Id.* at 764.

The court has "found the single subject rules to have been satisfied so long as challenged provisions meet the test of being reasonably germane to a common theme, purpose, or subject." *Ibid.* The court went on to note that, "[i]n setting forth the 'reasonably germane' test, several of our prior decisions have stated or repeated language suggesting the standard requires that each of a measure's parts be reasonably germane to one another as well as reasonably germane to a common theme, purpose, or subject. . . . In applying the reasonably germane test, however, our decisions uniformly have considered only whether each of the parts of a measure is reasonably germane to a common theme, purpose, or subject, and have not separately or additionally required that each part also be reasonably germane to one another." *Id.* at 764 n. 29. (citations omitted, emphasis in original.)

Examples of measures that have and have not met this test include:

- In *McPherson*, the California Supreme Court held a two-part legislatively sponsored measure violated the separate vote rule because each part was not reasonably germane to the other. *McPherson*, 38 Cal. 4th at 779. One part of the measure proposed a constitutional amendment to require that a political party's top vote-getter in a primary election be permitted to run in the following general election. The second part proposed a constitutional amendment to provide a new means for the state to pay bond obligations. *Id.* at 739. The scheme was described as "classic logrolling." *McPherson*, 38 Cal. 4th at 791 (Moreno, J., concurring).
- The California Supreme Court upheld Proposition 8, known as the Victims' Bill of Rights, against a single-subject challenge. The Court held each of its several facets was reasonably germane to the general subject of promoting the rights of actual or potential crime victims. The court also cautioned that initiative proponents did not have a blank check to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or a general object. *Brosnahan v. Brown*, 32 Cal. 3d 236, 246-253 (1982).
- A trailer bill that amended, repealed or added approximately 150 sections to over 20 codes had as its single subject "fiscal affairs" or "statutory adjustments" and was too broad to comply. *Harbor v. Deukmejian*, 43 Cal. 3d 1078, 1100-1101 (1987).

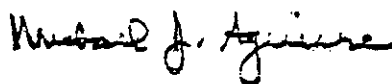
November 2, 2007

- A proposed initiative to restrict legislative salaries and transfer reapportionment from the Legislature to the Supreme Court could not be upheld under the general subject of voter involvement or voter approval of political issues. *Senate of the State of Cal.*, 21 Cal. 4th at 1162-1163.

CONCLUSION

Our Office will provide advice as to whether any proposed measure might meet the separate vote test when the Council decides which proposed charter amendments should go to the voters. This Office recommends the Committee and Council keep in mind the purpose behind the separate vote rule, namely, to prevent voter confusion and to avoid "logrolling," when considering whether certain measures should be considered separately or together by the voters.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

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Date 2/25/08 Docket Item Number 200

Subject Council Salary Setting

000629 REQUEST TO SPEAK

IN OPPOSITION

to the

☐

APPEAL

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ITEM

PRINT
NAME

John W Stamp

ADDRESS: NUMBER

STREET

CITY

STATE

ZIP

TELEPHONE

E-MAIL ADDRESS

REPRESENTING

- Attached donate time -

CHECK BELOW, IF APPLICABLE:

- ☐ I would like to register my position but I do not wish to speak.
- ☐ Yo voy a hablar en español y necesito la asistencia de un interprete.
(I will be speaking in Spanish and request the assistance of an interpreter.)

ARE YOU PART OF AN ORGANIZED PRESENTATION?

IF YES, LIST SPEAKERS IN ORDER OF PRESENTATION.

- No 75% of Judges Salary +31%
- Salary should be representative
- Bonus if Contingency reserve standards met and other policies

PLEASE READ GUIDE TO SPEAKING AT PUBLIC MEETING
ON REVERSE SIDE. THE CHAIRPERSON WILL CALL
YOU TO THE MICROPHONE AT THE APPROPRIATE TIME.



CC-1600 (Rev. 4-07)

Like Mission Bay and Library Ordinance

000630

200
John
Stump

City	Mayor's salary	Council member salary
Carlsbad	\$18,744	\$17,544
Chula Vista	\$18,000	\$17,200
Coronado	\$5,220	\$5,220
Del Mar	\$3,600	\$3,600
El Cajon	\$14,816	\$14,208
Encinitas*	\$14,232	\$14,232
Escondido*	\$12,519	\$15,063
Imperial Beach	\$13,200	\$13,600
La Mesa	\$14,000	\$12,000
Lemon Grove*	\$14,808	\$8,460
National City	\$11,560	\$10,910
Oceanside	\$19,416	\$17,616
Roway	\$16,336	\$12,736
San Diego	\$100,464	\$75,386
San Marcos	\$13,732	\$11,732
Santee	\$16,781	\$15,891
Solana Beach	\$7,426	\$7,126
Vista*	\$25,459	\$25,459

IN THE NATION			
New York City	8,214,426	\$195,000	\$112,500
Los Angeles	3,849,378	\$232,425	\$178,789
Chicago*	2,833,321	\$216,210	\$98,125
Houston	2,144,491	\$176,762	\$51,758
Phoenix	1,512,986	\$87,996	\$61,600
Philadelphia	1,448,394	\$186,044	\$98,000
San Antonio	1,296,682	\$3,000	\$1,040
San Diego	1,256,951	\$100,464	\$75,386
Dallas	1,232,940	\$60,000	\$37,500
San Jose*	929,936	\$127,000	\$90,000
Detroit	871,121	\$176,176	\$81,312
Jacksonville Fla.	794,555	\$172,823	\$40,000
Indianapolis	785,597	\$95,000	\$11,400
San Francisco	744,041	\$245,749	\$95,875
Columbus, Ohio	733,203	\$145,226	\$37,710
Austin, Texas	709,893	\$67,981	\$57,736
Memphis, Tenn.	670,902	\$160,000	\$33,150
Fort Worth, Texas	653,320	\$25,000	\$29,000

*Positions in San Diego County are part-time except for the mayors of San Diego, Chula Vista, Imperial Beach and San Diego City Council. Encinitas, Escondido's, Lemon Grove's, and Vista's salaries take effect in November. San Jose's salaries take effect July 1. Chicago's 2006 council salaries rise with inflation through 2010.

SOURCE: City and press reports

AARON STECKELBERG / Union-Tribune

Date 2-22-05 Docket Item Number 200

Subject Life Salary Salary

000631 REQUEST TO SPEAK

IN OPPOSITION

to the

☐

APPEAL

☐

ITEM

PRINT
NAME

Cynthia Cordero

~~San Diego, California~~

ADDRESS: NUMBER STREET CITY

80

STATE ZIP TELEPHONE

REPRESENTING

CHECK BELOW, IF APPLICABLE:

- ☐ I would like to register my position but I do not wish to speak.
☐ Yo voy a hablar en español y necesito la asistencia de un interprete.
(I will be speaking in Spanish and request the assistance of an interpreter.)

ARE YOU PART OF AN ORGANIZED PRESENTATION?

IF YES, LIST SPEAKERS IN ORDER OF PRESENTATION.

Time to John Stump

PLEASE READ GUIDE TO SPEAKING AT PUBLIC MEETING
ON REVERSE SIDE. THE CHAIRPERSON WILL CALL
YOU TO THE MICROPHONE AT THE APPROPRIATE TIME.



THE CITY OF SAN DIEGO

Date _____ Docket Item Number _____

Subject 207

000632 REQUEST TO SPEAK
IN OPPOSITION

to the

☐ **APPEAL** ☐ **ITEM**

PRINT
NAME

Kathleen MacLeod

6
ADDRESS: NUMBER STREET CITY

STATE ZIP TELEPHONE

E-MAIL ADDRESS

REPRESENTING

CHECK BELOW, IF APPLICABLE:

- ☐ I would like to register my position but I do not wish to speak.
☐ Yo voy a hablar en español y necesito la asistencia de un interprete.
(I will be speaking in Spanish and request the assistance of an interpreter.)

ARE YOU PART OF AN ORGANIZED PRESENTATION?
IF YES, LIST SPEAKERS IN ORDER OF PRESENTATION.

James & John Stump

PLEASE READ GUIDE TO SPEAKING AT PUBLIC MEETING
ON REVERSE SIDE. THE CHAIRPERSON WILL CALL
YOU TO THE MICROPHONE AT THE APPROPRIATE TIME.

CC-1600 (Rev. 4-07)



THE CITY OF SAN DIEGO

Date 2/25/2008 Docket Item Number 200

Subject Case 1 / Mr. [unclear] [unclear]

000633 REQUEST TO SPEAK

IN OPPOSITION

to the

☐ APPEAL ☐ ITEM

PRINT
NAME

*I give my Time & Effort
Heart*

Gregory T. Morales

ADDRESS: NUMBER STREET CITY

STATE ZIP TELEPHONE

E-MAIL ADDRESS

REPRESENTING

CHECK BELOW, IF APPLICABLE:

- ☐ I would like to register my position but I do not wish to speak.
- ☐ Yo voy a hablar en español y necesito la asistencia de un interprete.
(I will be speaking in Spanish and request the assistance of an interpreter.)

ARE YOU PART OF AN ORGANIZED PRESENTATION?
IF YES, LIST SPEAKERS IN ORDER OF PRESENTATION.

PLEASE READ GUIDE TO SPEAKING AT PUBLIC MEETING
ON REVERSE SIDE. THE CHAIRPERSON WILL CALL
YOU TO THE MICROPHONE AT THE APPROPRIATE TIME.



Date 2/25/08 Docket/Item Number 200

Subject COUNCIL/MAYOR SALARIES

000634 REQUEST TO SPEAK

IN OPPOSITION

to the

☐

APPEAL

☐

ITEM

PRINT
NAME

PHIL HAAT

~~ADDRESS NUMBER CITY STATE ZIP TELEPHONE~~

E-MAIL ADDRESS

SELF

REPRESENTING

CHECK BELOW, IF APPLICABLE:

- ☐ I would like to register my position but I do not wish to speak.
☐ Yo voy a hablar en español y necesito la asistencia de un interprete.
(I will be speaking in Spanish and request the assistance of an interpreter.)

ARE YOU PART OF AN ORGANIZED PRESENTATION?
IF YES, LIST SPEAKERS IN ORDER OF PRESENTATION.

PLEASE READ GUIDE TO SPEAKING AT PUBLIC MEETING
ON REVERSE SIDE. THE CHAIRPERSON WILL CALL
YOU TO THE MICROPHONE AT THE APPROPRIATE TIME.

CC-1600 (Rev. 4-07)



THE CITY OF SAN DIEGO

000635

MAXIMUM YEARLY COMPENSATION AND FRINGE BENEFIT COSTS
FOR MAYOR AND COUNCILMEMBERS
FISCAL YEAR 2007-2008

	<u>Mayor</u>	<u>Councilmember</u>
ANNUAL COMPENSATION	\$ <u>100,464</u>	\$ <u>75,386</u>
FRINGE BENEFITS (City Costs)		
Retirement	47,328	35,514
Retirement Offset	5,621	4,218
Supplement Pension Plan	6,078	4,561
Medicare	1,596	1,232
Flexible Benefits Plan (includes \$3,000 management benefits):		
A: No medical coverage	4,000	4,000
B: Employee only medical coverage	7,689	7,689
C: Employee & 1 dependent medical coverage	9,826	9,826
D: Employee & 2+ dependents medical coverage	10,690	10,690
Long Term Disability Insurance	502	377
Worker's Compensation	804	678
Parking	960	960
*Car Allowance	<u>9,600</u>	<u>9,600</u>
Total Fringe Benefits	<u>63,179**</u>	<u>67,830**</u>
TOTAL ANNUAL COMPENSATION AND FRINGE BENEFITS	<u>\$ 183,643</u>	<u>\$ 143,216</u>

**** 90% of Salary**

*Three options available: Cash reimbursement, Leased auto, or City auto.

**Assumes selection of medical coverage for employee & 2+ dependents.

Council seeks new way to raise its pay

Links to judicial salaries, inflation to be considered

By Matthew T. Hall
STAFF WRITER

February 24, 2008

SAN DIEGO – In the middle of what could be 11 straight years of budget woes, the San Diego City Council is trying to unload one of its more difficult fiscal decisions once and for all, by changing the way it boosts its own pay.

While a source of pride for most everyone else, pay raises are a source of aggravation for elected officials who must answer to a public increasingly dissatisfied with politicians.

Given the chance, government ethicist Bob Stern says, voters “would probably vote to slash their salaries to nothing.”

With that in mind, the council will meet tomorrow to discuss not only improving the salaries of the mayor and council but also linking future pay raises to an outside factor such as inflation or judicial pay.

In so doing, the council would cut itself – and, by extension, the public – out of a process that has been in place for more than 30 years. Any change would require a public vote.

Councilwoman Donna Frye came up with the general concept this month, and the City Attorney's Office put forth two proposals late Friday. Both proposals let the council determine the amount of the initial increase and set the mayor's salary at the council's base pay plus 33.3 percent.

Under one, mayor and council salaries would be tied to a yet-to-be-determined percentage of Superior Court judge pay, which is \$178,789 a year. Under the second, the salaries would rise with the local Consumer Price Index, which has gone up 35.6 percent in San Diego in the past decade.

Council members earn \$75,386 a year, though Council President Scott Peters defers a small part of his salary.

Mayor Jerry Sanders earns \$100,464 a year, but accepts about one-third of that to honor a campaign promise. A former police chief, Sanders promised not to re-enter the city pension system.

The council has steadily boosted mayor and council salaries since 1974 by periodically accepting recommendations from a city salary-setting commission.

Those commissioners are chosen by another panel that is handpicked by the mayor and council. Frye now says the council should have no role at all.

“When we're placed in the unenviable position of having to vote on our own salaries, any sort of dispassionate discussion about what a council salary should be goes out the window,” she said.

<http://signonsandiego.printthis.clickability.com/pt/cpt?action=cpt&title=Council+seeks+ne...> 2/25/2008

An annual survey of judicial salaries by the National Center for State Courts found California trial court judges have the highest salaries in the nation but, adjusted for a cost of living, are in the middle nationally.

000637

Stern, president of the Center for Governmental Studies in Los Angeles, said his preferred way to give raises to elected officials is tying salaries to some external factor, such as Los Angeles' use of judicial pay.

But he acknowledged, "What that means is you get larger salaries."

■Matthew Hall: (619) 542-4599; matthew.hall@uniontrib.com

»Next Story»

Find this article at:

http://www.signonsandiego.com/uniontrib/20080224/news_1m24salary.html

☐ Check the box to include the list of links referenced in the article.

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City of San Diego

000639

Review of Salary-Setting Measures

Rules, Open Government
and Intergovernmental
Relations Committee

May 28, 2008

1

RULES 5/28/08 #3



Salary Setting Commission Recommendations

- Current annual salary

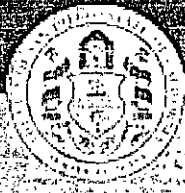
Council- \$75,386 Mayor- \$100,464

- Eff. 7-1-2008

Council- \$100,000 Mayor- \$130,000

- Eff. 7-1-2009

Council- \$125,000 Mayor- \$150,000



Comparison to Other Charter Bodies: County of San Diego

- County Charter requires supervisors' salaries to be set by ordinance of the board.
- 1977 ordinance, amended in 1998, automatically sets and annually adjusts supervisors' salaries at 80% of the salaries of judges of the California Superior Court.



Setting and Adjusting Superior Court Judges' Salaries

- Judges' salaries are set and adjusted by state statute. Eff. 7-1-07 = \$171,648
- Annually, existing salaries increased by average percentage salary increase given to state employees, or any dollar limitation on salaries given state employees.
- Legislature can amend statute to increase salaries: e.g., 8.5% in 2001, and again in 2007.



Proposal: Salaries Set, Then Linked to CPI-U (See 0-2008-117)

- Sets salaries for Mayor and Councilmembers only.
- Initial charter amendment sets salary increases for two years and then links increases to CPI-U for San Diego.
- Automatic annual salary adjustments linked to increases in CPI-U to be set by Auditor and Comptroller, not subject to modification, *veto or referendum.



Proposal: Salaries Linked to Judicial Salaries (See 0-2008-120)

- Sets salaries for Mayor and Councilmembers only.
- Charter amendment to set Mayor's salary at 100% and Councilmembers' salaries at 75% of judicial salaries, eff. 7-1-09.
- Automatic annual salary adjustments set by Auditor and Comptroller, incorporated into budget, not subject to modification, veto, or referendum.

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

July 1, 2008

REPORT TO THE MAYOR AND CITY COUNCIL

TWO PROPOSED MEASURES FOR SETTING THE SALARIES OF THE MAYOR AND CITY COUNCILMEMBERS

INTRODUCTION

The City Council has addressed a number of proposed changes to the current City Charter process for setting the salaries of elected officials since issuance of the Final Report of the 2007 San Diego Charter Review Committee [CRC Report] on October 7, 2007. The City Attorney has provided reports to the Rules Committee and to the City Council reviewing the law and analyzing several proposed changes. City Att'y Report Nos. RC 2007-17 (Nov. 2, 2007) [Separate Vote Rule]; RC 2008-1 (Jan. 14, 2008) [CRC Report re Charter Amendments]; RC-2008-3 (Jan. 29, 2008) [Supplemental Report re CRC Report Measures]; RC 2008-6 (Feb. 22, 2008) [Additional Salary Setting Options]; and RC 2008-13 (May 22, 2008) [Methods to Set Salaries for Mayor and Councilmembers].

On May 28, 2008, the Rules Committee considered four proposed measures referred to it by the Council on February 25, 2008. The Committee forwarded two measures to the Council for further discussion, without a recommendation on either. Attached is our May 22, 2008 report to the Rules Committee as further background. *See* Attachment A, RC 2008-13 (May 22, 2008). This report summarizes the measures forwarded to the Council by the Committee.

DISCUSSION

The discussion at the Rules Committee meeting of May 28, 2008 centered on two measures. One measure (O-2008-120 COR.COPY) was sponsored by Council President Pro Tem Madaffer and Councilmember Young. The second measure (O-2008-171) was sponsored by Councilmember Frye. Without recommending either, the Committee forwarded both measures to the City Council for further discussion and possible action. Both measures are attached to this report for your review.

Both measures would repeal San Diego Charter section 41.1 (Salary Setting Commission), and amend sections §§ 12.1 (Councilmanic Salaries) and 24.1 (Mayor's Salary). These are the Charter provisions that establish the City's seven-member Salary Setting Commission, permit it to review the Mayor and Councilmembers salaries every two years, and to recommend any adjustment to those salaries. The Council may set the salaries lower, but not

000646

higher than the Commission's recommendation, and the ordinance the Council must pass setting those salaries is made subject to referendum.

In general, both new measures replace the current system by fixing the salaries of the Mayor and Councilmembers according to a formula, and then adjusting them annually according to an external equation set by state law for state superior court judges.

**Council President Pro Tem Madaffer's and Councilmember Young's Measure:
(O-2008-120 COR.COPY).**

Before the Council is a corrected version of the measure this Office presented to the City Council (O-2008-120) for the February 25, 2008 meeting. This measure would establish the Mayor's salary at 100% and the Councilmembers' salary at 75% of the salary of a judge of the Superior Court of the state of California as set and adjusted annually by state law. It would be effective July 1, 2009 and would raise the existing salaries to the designated percentage of whatever a Superior Court judge's salary is as of that date. Effective July 1, 2007, the salary of a judge of the Superior Court for the State of California was \$171,648.00.

Provided for the Council's discussion in this measure are two options. One option would cap any annual adjustment increase to Mayor or Councilmember salaries at no more than five percent of their existing salaries, even if the state law increases for judges exceeded five percent. A second option adds an "escape clause," allowing the Council flexibility in the event of a City fiscal emergency, by permitting it to suspend operation of the new charter sections for one fiscal year.

This Office deleted a proposed amendment to Charter section 290 from the earlier draft, incorporating a new sentence within amended sections 12.1 and 24.1 which says: "The budgeted salary shall not be subject to modification by the City Council." It also replaced the earlier reference to the City Auditor and Comptroller with "Chief Financial Officer," to be consistent with recently amended Charter section 39.

Councilmember Frye's Measure: (O-2008-171).

After the Committee meeting May 28, 2008, Councilmember Frye approved the version of the measure provided in Ordinance No. O-2008-171.¹

The measure would establish the salaries of the Mayor and City Councilmembers at their current dollar amount. It would increase those established salaries by either three or five percent (to be selected by the Council) each year for two consecutive years. Effective July 1, 2011 and each July 1 thereafter, the salaries would be adjusted upward with any upward adjustments made by state law to the salary of judges of the Superior Court of the State of California. Increases to

¹ The measure discussed at the meeting May 28, 2008 would have affected all elected officials and included options of fixed raises of two or three percent.

REPORT TO THE
MAYOR AND CITY
COUNCIL

-3-

July 1, 2008

000647

City officials' salaries would be capped at no greater than 5 percent per year regardless what state increases may occur.

CONCLUSION

This Office will provide assistance to the Council whenever this matter is discussed.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

JAK:nda
RC-2008-15
Attachment
cc: Independent Budget Analyst

000649

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

May 22, 2008

**REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT
AND INTERGOVERNMENTAL RELATIONS**

METHODS TO SET SALARIES FOR THE MAYOR AND COUNCILMEMBERS

INTRODUCTION

The City Council has addressed a number of proposed changes to the current City Charter process for setting the salaries of elected officials since issuance of the Final Report of the 2007 San Diego Charter Review Committee [CRC Report] on October 7, 2007. The City Attorney has provided reports to the Rules Committee and to the City Council reviewing the law and analyzing several proposed changes. City Att'y Report Nos. RC 2007-17 (Nov. 2, 2007) [Separate Vote Rule]; RC 2008-1 (Jan. 14, 2008) [CRC Report re Charter Amendments]; RC-2008-3 (Jan. 29, 2008) [Supplemental Report re CRC Report Measures]; and RC 2008-6 (Feb. 22, 2008) [Additional Salary Setting Options].

The Council decided to present three measures unrelated to salary setting issues to the voters in the June 3, 2008 primary election. On February 25, 2008, the Council deferred to the Rules Committee further discussion and consideration on four proposed measures amending the City Charter to change the way the salaries of the City Council and the Mayor are currently established that might be presented to voters in the November 4, 2008 election. These measures are scheduled for consideration by the Rules Committee on May 28, 2008. This report briefly reviews the four measures to assist the Committee in its discussion.

DISCUSSION

I. The Current Process for Setting Salaries.

The City's seven-member Salary Setting Commission is appointed by the Civil Service Commission to recommend to the City Council the enactment of an ordinance establishing the salaries of the Mayor and City Council. Charter § 41.11 (Salary Setting Commission). The process occurs at two year intervals. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary). The Council may set the salaries lower, but may not set them higher than the Commission's recommendation. *Ibid.* The requirement the Council act by ordinance necessarily requires the Council to vote on its own salary. The ordinance setting Council and Mayoral salaries is expressly made subject to referendum. Charter §§ 12.1, 24.1.

As a member of the City Council under the City's former government structure, the Mayor would have voted to approve his salary. Under the trial Mayor-Council form of government, the Mayor does not vote to establish his salary, because he is not a member of the City Council. However, the salaries of the Mayor and Council are part of the City Budget and Salary Ordinance over which the Mayor has special veto powers. Charter § 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power).¹

II. The CRC Report Recommendation.

In order to avoid the requirement that Councilmembers vote on their own salaries, the CRC Report recommended the Salary Setting Commission be reconstituted and given broader powers to actually *set* the salaries every two years for all elected officials, including the Mayor, City Councilmembers, and the City Attorney. CRC Report pp. 9, 21-22 and 70-73 (Excerpts attached as Exhibit A.). The reconstituted Salary Setting Commission is patterned after the California Citizens Compensation Commission, established by the California Constitution to set the salaries of state officers. Cal. Const. art. III. § 8. (Text attached as Exhibit B.) The CRC Report recommended changes requiring the Council to adopt an ordinance that incorporates the salaries set by the Commission, with such ordinance subject to referendum and exempt from any Mayoral veto for the duration of the Mayor-Council form of government. The City Attorney recommended minor changes to the language of the measure proposed in the CRC Report. City Att'y Report No. RC 2008-1 (Jan. 14, 2008) at pp. 12-13.

III. Council Action on January 14, 2008.

On January 14, 2008, the Council directed this Office to prepare a modified version of that recommended by the CRC Report to set salaries for all elected officials, deleting the requirement the Council adopt an ordinance, yet retaining the right of referendum.² This Office drafted a measure (O-2008-94) for Council to review at its February 4, 2008 meeting, incorporating and explaining our various changes. City Att'y Report No. RC-2008-3 (Jan. 29, 2008) at p. 9. However, this Office retained the requirement the Council adopt this mandatory ordinance in order to preserve the referendum right, noting that the City Charter reserves the referendum process only to "any ordinance passed by the Council." San Diego Charter § 23.³

IV. Council Action on February 4, 2008.

¹ The salary of the City Attorney is set by the City Council and may not be decreased during the term of office. Charter § 40 (City Attorney).

² The suggestions for the measures were based on a January 11, 2008 memorandum from Council President Scott Peters, Council President Pro Tem Jim Madaffer, and Councilmember Kevin Faulconer.

³ Section 5.1 of the City Charter establishes a detailed procedure used by the City's Redistricting Commission that subjects its final redistricting plan to referendum without adoption of an ordinance. This procedure has not been evaluated to determine if it could be a successful model for a salary setting process.

000651

At its February 4, 2008 meeting, the Council directed this Office to work with the Independent Budget Analyst [IBA] to provide the Council with additional options for setting salaries that might link the Mayor's and Councilmembers' salaries to some automatic external guide and excluding changes to the process setting the City Attorney's salary. Suggestions included linking salaries to judicial salaries, or setting initial salary increases and linking future increases to the Consumer Price Index [CPI].

Our February 22, 2008 Report to Council compared the salary setting process used by three other charter-regulated bodies: the San Diego County Board of Supervisors (salaries set by their ordinance); the City Council of Los Angeles (city charter ties salaries of Mayor and Council to judicial salaries); and Anaheim (charter incorporates the state law regulating salaries in general law cities). We provided the Council with two additional draft measures for consideration that: (1) would link Mayoral and Councilmember salaries to a undefined percentage of state judicial salaries as set and adjusted by state law (O-2008-116); and (2) would establish salaries for two years, adjusting them upward after that according to the San Diego Consumer Price Index for Urban Consumers [CPI-U] (O-2008-117).

On February 22, 2008 our office received a request from Councilmembers Madaffer and Young to draft a measure to be effective July 1, 2009, setting the Mayor's salary at 100% and the Council's salary at 75% of the salaries established and adjusted for state superior court judges. We provided the Council with such a measure (O-2008-120) for the February 25, 2008 meeting. Effective July 1, 2007, the salary of a judge of the Superior Court for the State of California is \$171,648.00.

The three newer measures provided two additional options for Council consideration. One option would cap any annual adjustment increase to Mayor or Council salaries at no more than five percent (5%) of their existing salaries, even if the state law increases for judges or the CPI-U increases exceeded 5%. This option was patterned on the state law limiting the salaries of Councilmembers in general law cities that has been adopted by the City of Anaheim. A second option created an "escape clause," allowing the Council flexibility in the event of a City fiscal emergency by permitting it to suspend operation of the charter sections for one fiscal year. For example, similar language appears in San Diego Municipal Code sections 22.0228(e) (relating to the budget and library appropriations) and 22.0229(e) (relating to the budget and regional park improvements).

000652

V. The 2008 Salary Setting Commission's Recommendation.

In its report issued February 15, 2008, the San Diego Salary Setting Commission recommended increases to the existing salaries of the Mayor and City Councilmembers as follows: effective July 1, 2008, Councilmembers' and the Mayor's salaries would increase respectively to \$100,000 and \$130,000; and effective July 1, 2009, Councilmembers' and the Mayor's salaries would increase respectively to \$125,000 and \$150,000.⁴

VI. Council Action February 25, 2008.

All four draft measures were before the Council at its February 25, 2008 meeting. The Council elected to take no action on the matters, referring all of them to the Rules Committee for further discussion. The discussion of these matters is scheduled to occur May 28, 2008.

CONCLUSION

This Office is ready to provide assistance to the Committee at the hearing May 28, 2008 and thereafter.

Respectfully submitted,

MICHAEL J. AGUIRRE
City Attorney

JAK:als
RC-2008-13

⁴ On April 14, 2008, the City Council voted to set the salaries as follows: effective July 1, 2008 the Mayor's and Councilmembers' annual salaries would be set respectively at \$100,464 and \$75,386; and effective Jan. 1, 2009 at \$130,000 and \$93,485, respectively. The Mayor vetoed that action and the Council declined to override the veto. The Council formally rejected the recommendations of the Salary Setting Commission on April 21, 2008, retaining existing salaries for the Mayor and Council.

<div style="font-size: 24pt; font-weight: bold; margin-bottom: 5px;">000653</div> <div style="font-weight: bold; margin-bottom: 5px;">REQUEST FOR COUNCIL ACTION</div> <div style="font-weight: bold; margin-bottom: 5px;">CITY OF SAN DIEGO</div>		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 335 07/15	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	
3. DATE: July 1, 2008			
4. SUBJECT: Two Proposed Ballot Measures to Amend the City Charter to Eliminate the Salary Setting Commission and Establish a New Method to Set the Salaries of the Mayor and City Councilmembers			
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Jo Kiernan, Deputy City Attorney 236-6220 M.S. 59		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Catherine Bradley, Chief Deputy City Attorney 236-6220 M.S. 59	
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES			
FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT
JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:
10. ROUTING AND APPROVALS			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Jo Kiernan</i>	7/2/08
2			
3			
4	LIAISON OFFICE		
5			
6			
7			
		DOCKET COORD: _____ COUNCIL LIAISON _____	
		<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 7/15/08	
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)			
1. Submitting to the qualified voters of the City of San Diego at the Municipal General Election consolidated with the Statewide Election to be held on November 4, 2008, one proposition amending the City Charter by amending the City Charter by retitling and amending Article III, section 12.1; amending Article IV, section 24.1; and repealing Article V, section 41.1 all relating to setting the salaries of elected City officials. (Two versions) 2. Directing the City Attorney to prepare a ballot title and summary. 3. Directing the City Attorney to prepare an impartial analysis. 4. Directing the Mayor's Office to prepare a fiscal analysis. 5. Assigning authorship of the ballot argument.			
11A. STAFF RECOMMENDATIONS:			
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)			
COUNCIL DISTRICT(S): N/A COMMUNITY AREA(S): N/A ENVIRONMENTAL IMPACT: This action is not a "project" for purposes of CEQA. HOUSING IMPACT: N/A OTHER ISSUES:			

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; AMENDING ARTICLE IV, SECTION 24.1; AND REPEALING ARTICLE V, SECTION 41.1, ALL RELATING TO SETTING THE SALARIES OF THE MAYOR AND THE CITY COUNCILMEMBERS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-_____, adopted on _____, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide General Election on November 4, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for the Mayor and the City Council by establishing the salaries for those officials, adjusting those salaries upward for two years, and thereafter annually adjusting those salaries with adjustments made by state law to the salary of judges of the Superior Court of the State of California, capping future annual increases at no greater than five percent per year; and

000658

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition amending the City Charter by retitling and amending Article III, section 12.1; amending Article IV, section 24.1; and repealing Article V, section 41.1 is hereby submitted to the qualified voters at the Municipal Election to be held on November 4, 2008, with the proposition to read as follows:

PROPOSITION

Section 12.1: ~~Councilman~~member Salaries

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. The annual salary for a~~
Councilmember is established at its present amount of \$75,386. Effective July 1, 2009, the annual salary for all Councilmembers shall be increased by [three percent] [five percent]. Effective July 1, 2010, the annual salary of all Councilmembers shall be increased by [three

000659

percent] [five percent]. Effective July 1, 2011 and each July 1 thereafter, the annual salary for all Councilmembers shall be adjusted upward with any upward adjustment made by state law to the salary of the judges of the Superior Court of the State of California, except that no annual upward adjustment shall exceed 5 percent of the Councilmember's salary in effect on June 30 of the preceding fiscal year. The Chief Financial Officer shall be responsible for determining the upward adjustment to the salary of Superior Court judges by state law and for setting and adjusting the salary of Councilmembers in accordance with this section. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements. The budgeted salary shall not be subject to modification by the City Council.

Section 24.1: Mayor's Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~ The annual salary for the Mayor is established at its present amount of \$100,464. Effective July 1, 2009, the annual salary for the Mayor shall be increased by [three percent] [five percent]. Effective July 1, 2010, the annual salary of the Mayor shall be increased by [three percent] [five percent]. Effective July 1, 2011 and each July 1 thereafter, the annual salary of the Mayor shall be adjusted upward with any upward adjustment made by state law to the salary of the judges of the Superior Court of the State of

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California, except that no annual upward adjustment shall exceed five percent of the Mayor's salary in effect on June 30 of the preceding fiscal year. The Chief Financial Officer shall be responsible for determining the upward adjustment to the salary of Superior Court judges by state law and for setting and adjusting the salary of the Mayor in accordance with this section. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements. The budgeted salary shall not be subject to modification by the City Council.

Section 41.1: Salary Setting Commission

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ . AMENDS THE CITY CHARTER TO ESTABLISH AND ADJUST THE SALARIES FOR THE MAYOR AND THE CITY COUNCILMEMBERS. Shall the Charter be amended to establish the salaries of the Mayor and the City Councilmembers, provide raises for two consecutive years, and then annually adjust salaries upward with state law adjustments to the salary of Superior Court judges, subject to a five percent cap?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

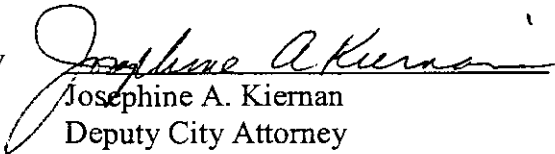
Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

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Section 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Josephine A. Kiernan
Deputy City Attorney

JAK:nda
6/27/08
Or.Dept:CityAtty
O-2008-171

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY RETITLING AND AMENDING ARTICLE III, SECTION 12.1; AMENDING ARTICLE IV, SECTION 24.1; REPEALING ARTICLE V, SECTION 41.1, ALL RELATING TO SETTING THE SALARIES OF THE MAYOR AND CITY COUNCILMEMBERS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-_____, adopted on _____, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide General Election on November 4, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to modify the salary setting process for the Mayor and the City Councilmembers by establishing the salaries for these officials at a percentage of the salary provided the judges of the Superior Court of the State of California and linking future upward adjustments to the salaries of these officials to adjustments made by state law to the salary of Superior Court judges; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition amending the City Charter by retitling and amending Article III, section 12.1; amending Article IV, section 24.1; and repealing Article V, section 41.1, is hereby submitted to the qualified voters at the Municipal Election to be held on November 4, 2008, with the proposition to read as follows:

PROPOSITION

Section 12.1: ~~Councilman~~member Salaries

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Members of the City Council shall be paid an annual salary equal to seventy-five percent (75%) of that prescribed and adjusted by state law for judges of the Superior Court of the State of California. The Chief Financial Officer shall be responsible for determining the salary of Superior Court judges and for setting and adjusting~~

the salary of Councilmembers in accordance with this section. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements, to be effective on July 1, 2009, and on July 1 of each year thereafter. The budgeted salary shall not be subject to modification by the City Council. [Option 1: Annual adjustments to the salary of Councilmembers shall not exceed five percent of the salary in effect on June 30 of the preceding fiscal year.] [Option 2: Upon a determination by the City Manager that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Council may, by majority vote, suspend compliance with this section for any fiscal year.]

Section 24.1: Mayor's Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~ The Mayor shall be paid an annual salary equal to that prescribed and adjusted by state law for judges of the Superior Court of the State of California. The Chief Financial Officer shall be responsible for setting and adjusting the salary of the Mayor. The City Manager shall incorporate such salary in the annual budget submitted to the Council, subject to balanced budget requirements, to be effective on July 1, 2009, and on July 1 of each year thereafter. The budgeted salary shall not be subject to modification by the City Council. [Option 1: Annual adjustments to the salary of the Mayor shall not exceed five percent

of the salary in effect on June 30 of the preceding fiscal year.] [Option 2: Upon a determination by the City Manager that anticipated revenues in any fiscal year will be insufficient to maintain existing City services, the City Council may, by majority vote, suspend compliance with this section for any fiscal year.]

Section 41.1: Salary Setting Commission

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two year terms and four are appointed for four year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ . AMENDS THE CITY CHARTER TO ESTABLISH AND ADJUST THE SALARIES FOR THE MAYOR AND COUNCILMEMBERS. Shall the Charter be amended to establish and adjust the salaries of Councilmembers and Mayor [Option? - with certain possible exceptions], by setting those salaries at a percentage of the salary of Superior Court judges as set by state law and by adjusting the salaries upward annually with state law adjustments to judges' salaries?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.


Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of

San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Josephine A. Kiernan
Deputy City Attorney

JAK:nda

6/27/08

Or.Dept:CityAtty

O-2008-120COR.COPY

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DIRECTING THE CITY ATTORNEY TO PREPARE A BALLOT TITLE, SUMMARY, AND IMPARTIAL ANALYSIS; DIRECTING THE MAYOR TO PREPARE A FISCAL ANALYSIS; AND ASSIGNING AUTHORSHIP OF THE BALLOT ARGUMENT; ALL REGARDING THE BALLOT MEASURE SETTING THE SALARIES OF THE MAYOR AND CITY COUNCILMEMBERS.

WHEREAS, San Diego Municipal Code section 27.0504 allows the City Council to direct the City Attorney to prepare a ballot title and summary of any proposed ballot measure; and

WHEREAS, San Diego Municipal Code section 27.0505 allows the City Council to direct the City Attorney to prepare an impartial analysis of any proposed ballot measure; and

WHEREAS, San Diego Municipal Code section 27.0506 allows the City Council to direct the City Manager (Mayor under the current Council-Mayor form of government) to prepare a fiscal impact analysis of any proposed legislative act; and

WHEREAS, San Diego Municipal Code section 27.0513 allows the City Council to assign authorship and signing of the ballot argument to itself, individual Councilmembers, and the Mayor; and

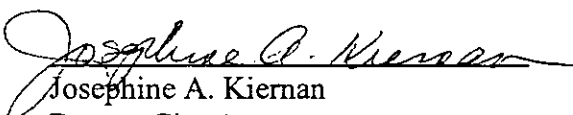
WHEREAS, at a meeting held on July____, 2008, the City Council adopted Ordinance No. O-_____ (N.S.), to place on the November 4, 2008 ballot the proposition to amend the City Charter to change the process for setting and adjusting the salaries of the Mayor and City Councilmembers; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Attorney is directed to prepare a ballot title and summary of the proposed ballot measure for inclusion in the voter pamphlet and to deliver the ballot title and summary to the Office of the City Clerk, Elections Section, no later than August 18, 2008.
2. That the City Attorney is directed to prepare an impartial analysis of the proposed ballot measure for inclusion in the voter pamphlet and to deliver the impartial analysis to the Office of the City Clerk, Elections Section, no later than August 18, 2008.
3. That the Mayor is directed to prepare, in consultation with the Independent Budget Analyst, a fiscal impact analysis of the proposed ballot measure for inclusion in the voter pamphlet and to deliver said analysis to the Office of the City Clerk, Elections Section, no later than August 18, 2008.
4. That _____ is authorized to sign and file a written argument in support of the ballot measure for inclusion in the voter pamphlet and to deliver said argument to the Office of the City Clerk, Elections Section, no later than August 21, 2008.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Josephine A. Kiernan
Deputy City Attorney

JAK:SBS:nda
06/30/08
Or.Dept:CityAtty
R-2008-1209